

# Topic: Paycheck Protection Program (PPP) Loans

Updated as of **March 30, 2021**

## What We Know:

- The PPP loan program is accepting applications for both First and Second Draw loans
  - An additional \$7.25 billion was added to the PPP program by the American Rescue Plan enacted on March 11, 2021
  - **The PPP has been extended. Applications can be submitted through May 31, 2021. The SBA will have through June 30th to process pending applications. President Biden signed this bill into law on March 30th.**
  - PPP borrower First Draw ([Form 2483](#)) and Second Draw ([Form 2483-SD](#)) application forms (updated on March 3rd)
- Biden Administration also changed some regulations to expand eligibility to those who might have been blocked from participation last year:
  - Allowing sole proprietors, independent contractors, and self-employed individuals to receive more financial support by revising the PPP's funding formula for these categories of applicants;
  - Eliminating an exclusionary restriction on PPP access for small business owners with prior non-fraud felony convictions, consistent with a bipartisan congressional proposal;
  - Eliminating PPP access restrictions on small business owners who have struggled to make student loan payments by eliminating student loan debt delinquency as a disqualifier to participating in the PPP; and
  - Ensuring access for non-citizen small business owners who are lawful U.S. residents by clarifying that they may use Individual Taxpayer Identification Number (ITIN) to apply for the PPP.
- How to calculate First Draw Paycheck Protection Program loan amounts and what documentation to provide - by business type: <https://www.sba.gov/document/support-how-calculate-first-draw-ppp-loan-amounts> (effective January 17, 2021)
- Self-employed individuals who file Form 1040, Schedule C, *Profit or Loss From Business*, can calculate their maximum loan amount using gross income instead of net profit.
  - New PPP First Draw ([Form 2483-C](#)) and Second Draw ([Form 2483-SD-C](#)) borrower application forms for Schedule C filers using gross income
- The *Taxpayer Certainty and Disaster Tax Relief Act of 2020*, enacted December 27, 2020, modified the existing PPP loan program:
  - Business expenses paid for with the proceeds of PPP loans **are** tax deductible.. This provision is effective for the 2020 tax year and beyond.
  - Borrowers can choose the duration of their loan forgiveness covered period—between 8 weeks and 24 weeks.
  - Implemented a simplified PPP loan forgiveness process
    - For borrowers with PPP loans of \$150,000 or less:
      - A 1-page form.
        - It is expected to be available by January 20, 2021.
        - In the meantime, the SBA's EZ Loan Forgiveness Application has been revised (expires 12/31/2023) and can

be found at: <https://www.sba.gov/sites/default/files/2020-12/PPP%20Forgiveness%20Application%203508EZ%2028Revised%2012.29.2020%29%20Fillable-508.pdf>

- Required information on the form:
  - Number of employees retained because of PPP loan
  - Estimated amount of PPP loan spend on payroll costs
  - Total loan value Retain supporting employment records for 4 years and supporting expenses documentation for 3 years.
- Created a **“Second Draw” PPP loan program for businesses with 300 or fewer employees if they have sustained a 25% reduction in gross revenues** between comparable quarters in 2019 and 2020. Newer business entities may compare different quarters to one another to show at least a 25% loss when compared to a previous quarter.
  - Maximum loan amount is 2.5x a year’s worth of average monthly payments for payroll costs **paid or incurred** by eligible borrowers, capped at \$2 million.
  - Forgivable expenses include the expanded payroll, workplace adaptations, and technology operations expenses listed below.
  - Borrowers will receive full forgiveness of Second Draw PPP loans if they spend at least 60% of their Second Draw loan on payroll costs over a time period of their choosing—between 8 weeks and 24 weeks.
  - For businesses with more than 1 physical location, eligibility for Second Draw of PPP is limited to one covered loan.
  - Must have used, or will use, the full amount of your previous PPP loan before a second PPP loan can be distributed to you.
  - For Second Draw loans of more than \$150,000, the borrower must submit its loan forgiveness application for the First Draw PPP loan before or simultaneously with the loan forgiveness application for the Second Draw loan.
  - Set-asides are included to ensure that smaller borrowers such as **first or second-time PPP borrowers with 10 or fewer employees** get help
  - Borrower must use all of the proceeds of the First Draw PPP loan before disbursement of the Second Draw loan.
  - **All Second Draw PPP Loans will have the same terms regardless of lender or borrower. You do not need to use the same borrower as you did for the First Draw PPP loan, although it might be more efficient to do so. A list of participating lenders as well as additional information and full terms can be found [here](#).**
  - **Q:** Will one be required to use the same financial institution for your Second Draw PPP loan that you used the first time?
- **Covered periods for the First and Second Draw loans cannot overlap.**
- **Expanded the list of qualifying forgivable expenses.** The expanded list applies retroactively to all PPP loans which have yet to be forgiven.
  - Supplier costs on contracts and purchase orders in effect before the beginning of the covered period.



activity as before February 15, 2020 due to standards established by HHS, the CDC, or OSHA from March 1-December 31, 2020 related to sanitation, social distancing, and other COVID-19 safety requirements.

- Adjusted the allocation of forgivable expenses by requiring a minimum of **60% of the forgiven loan amount must be used toward payroll** which allows for up to 40% of the forgiven amount to be used for other eligible forgivable expenses of rent, mortgage interest payments, utilities and the like. Use Gross Payroll cost when calculating forgivable amount (taxes included). The legislation does not change CARES Act parameters for how unforgiven proceeds of the loan must be used.
  - Despite the extension of the covered period, SBA has limited the forgiveness of owner compensation replacement for individuals with self-employment income who file a Schedule C or F to either eight weeks' worth (8/52) of 2019 net profit (up to \$15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of 2019 net profit (up to \$20,833) for a 24-week covered period per owner in total across all businesses.
  - All accrued interest is forgivable under the program. (Interest would only be due on the "unforgiven" balance).
  - A borrower's loan forgiveness amount will NOT be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction. Documentation will be required in order to prove the above.
  - A borrower with a PPP loan of \$50,000 or less is exempt from any reductions to the loan forgiveness amount.
- First Draw PPP Loan Terms
  - Minimum maturity period for PPP loans received after the PPPFA is enacted was extended from 2 years to 5 years. The maximum loan term remains 10 years.
    - While the extended minimum maturity period does NOT automatically apply to existing PPP loans, the legislation does allow borrowers and lenders to negotiate to extend the minimum maturity period of existing loans from 2 to 5 years.
    - Extends the covered period of the PPP loan from June 30, 2020 to December 31, 2020. The legislation maintains the requirement to rehire employees to be eligible for forgiveness, but extends a safe harbor rehiring deadline to December 31, 2020. As noted above, there are also factors under which the rehiring requirements may be reduced in your case.
    - Extends the deferral date of the loan.
      - CARES Act allowed for a 6-month deferral before payments towards the remaining PPP loan amount were required.
      - Under the PPPFA, borrowers are not required to make any loan payments until their loan forgiveness amount or denial of forgiveness is determined by the SBA.
      - If a borrower fails to apply for forgiveness within 10 months of the last day of the covered period of the loan, the borrower must start

making payments of principal, interest, and fees beginning after 10 months of the last day of the covered period (December 31, 2020).

- Permits borrowers to delay the payment of employer payroll taxes incurred between March 27, 2020 and December 31, 2020 until December 31, 2021 (with respect to up to 50% of the amounts due) and December 31, 2022 (with respect to the remaining amounts due up to 50%).
- Borrowers were previously prohibited by CARES Act from using this benefit if their PPP loans were forgiven in whole or in part.
- In cases of partnerships, previously approved loan amounts can be increased to include compensation of the partners, as long as the SBA Form 1502 has yet not been submitted.
- Money can be used to pay for up to 24 weeks of expenses (from the date of the loan origination OR to December 31, 2020, whichever is earlier) for payroll and its associated costs, mortgage interest, rent, and utilities
- As a result of the 12/27/2020 COVID relief bill, the exclusion of compensation in excess of \$100K/employee annually applies only to cash compensation. It does not apply to non-cash benefits including:
  - Retirement contributions
  - Payment of group healthcare coverage (including insurance premiums), or
  - Payment of state and local taxes assessed on compensation of employees.
- 1 FTE= anyone >30 hours-this now has new options under application information
- Up to 24-week time period which begins the date of loan's first disbursement
- Money not forgiven will be financed at 1% interest rate, with a up to a 5 year term.
  - All new PPP loans issued on or after June 4, 2020 will have a 5-year term
  - PPP borrowers with loans issued before June 4, 2020 are empowered by the PPPFA to negotiate with lenders to negotiate a 5-year maturity period.
- Forgiveness requirements/Information
  - The Economic Injury Disaster Loan (EIDL) Advance Amount received by the borrower will NOT REDUCE the amount of PPP loan forgiveness.
  - Forgiveness amount is reduced if the number of FTEs decreases or if any employee is paid >25% reduction in pay
    - With the enactment of the PPPFA, there is a safe-harbor IF the borrower can certify in good faith ONE of the following:
      - Documented inability to rehire employees who worked for the borrower on February 15, 2020 (borrowers are required to inform the applicable state unemployment office of any employee's rejected rehire offer within 30 days of the rejected offer--this is your documentation); or
      - Documented inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
      - Documented inability to return to the same level of business activity as before February 15, 2020 due to standards established by HHS, the CDC, or OSHA from March 1-December 31, 2020 (or for PPP loans originated after December 27, 2020, no later than

the last day of the loan's covered period) related to sanitation, social distancing, and other COVID-19 safety requirements.

- PPP borrowers that apply early for loan forgiveness forfeit the full value of the safe-harbor provision allowing them to restore salaries or wages by Dec. 31 and avoid reductions in the loan forgiveness they receive. For example, if a borrower has a 24-week period that ends in November but wants to apply in September, any wage reduction in excess of 25% as of September would be calculated for the entire 24-week period even if the borrower restores salaries by Dec. 31. **Example:** A borrower is using a 24-week covered period. This borrower reduced a full-time employee's weekly salary from \$1,000 per week during the reference period to \$700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first \$250 (25% of \$1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list \$1,200 as the salary/hourly wage reduction for that employee (the extra \$50 weekly reduction multiplied by 24 weeks). If the borrower applies for forgiveness before the end of the covered period, it must account for the salary reduction for the full 24-week covered period (totaling \$1,200).
- Must apply for forgiveness within 10 months of the last day of the covered period of the loan The lender must issue a decision re: loan forgiveness within 60 days
- **Q:** Will the types of qualifying payroll expenses have to be new expenses as a result of COVID or can the use of technology operations systems be included even if they were in use prior to the forgiveness period? **A:** SBA rulemaking does not include any date/timeframe limitations to this type of expense. Recommend asking your PPP lender for more information.
- Resources:
  - General SBA Guidance: <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources#section-header-3>
  - IRS FAQ's re: Employee Retention Tax Credits (ERTC): <https://www.irs.gov/coronavirus/employee-retention-credit>
  - New COVID-19 Employer Tax Credits: <https://www.irs.gov/coronavirus/new-employer-tax-credits>
  - COVID-19 Business Tax Relief Tool: <https://www.taxpayeradvocate.irs.gov/covid-19-home/biztaxrelieftool/>
  - Department of Treasury resources for small businesses: <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
  - Please see SBA [Loan Forgiveness Application](#) (revised June 16, 2020 and now expires December 31, 2023) and [FAQs](#)
  - SBA's PPP info landing page: <https://www.sba.gov/document?program=PPP>
  - [Frequently Asked Questions for Lenders and Borrowers \(December 9, 2020\)](#)
  - New: [Top-line Overview of Second Draw PPP Loans](#)
  - [Paycheck Protection Program Second Draw Borrower Application Form](#)

- (released January 8, 2021)
  - [Please reference guidance by Tucker and Arensberg](#)
  - [NFIB PPP Loan Forgiveness EZ Application Step-by-Step webinar](#) (available on-demand):
- Required documentation/Record keeping
  - Documentation of payroll including number of FTEs and pay rates during covered period including federal and state tax filings
    - \*Gross payroll reports
    - Federal/State/Local tax filings (employer contributions)
    - \*Health insurance coverage receipts/withholdings
    - \*Paid PTO
    - Retirement plan receipts/withholdings/matches
    - Student loan contributions
      - \* Contributions limited to 100K/employee
  - Receipts of payments for rent, mortgage interest and utilities
  - Copies of rent agreements or mortgage documents
  - Certification statement
  - Any requested supporting documents
  - Lenders are the ones making the forgiveness determination so follow your lender's guidelines for documentation requirements
  - Borrowers and lenders may rely on the laws, rules, and guidance available at the time their loans were processed.
  - Retain records:
    - Loans under \$150,000: Keep records 4 years after submitting the loan forgiveness application.
    - Loan of \$150,000 or more: Keep records for 6 years after the date the loan is forgiven or paid in full.
- Audits
  - Borrowers of less than \$2M are deemed to have met the need certification
  - Borrowers of greater than \$2M will have to justify the business need

## What We Don't Know

- If student loan contributions (up to \$5250 which CARES allowed to be paid by employers through the end of the year and treated as tax-free (instead of income) for employees) are considered a payroll cost, and if so, if this is included in the 100K limit? A PPS member reported SBA in favor of using up to \$5250 for student loan payback as part of the 60% payroll portion. Contact your PPP lender and reference section 2206 of the Cares Act to get their guidance.
- Is the Provider Relief Fund grant amount included in one's gross income when calculating revenue loss of 25% or more in order to qualify for a Second Draw PPP loan?
- What will the audit process look like?

## What You Can Do Now:

- If you wish to begin preparing your application for a Second Draw PPP loan, download the application form to see the information that will be requested from you when you apply with a lender: [Paycheck Protection Program Second Draw Borrower Application Form](#) (released January 8, 2021)
- If you are a current PPP loan holder, PPPFA allows borrowers and lenders to negotiate extending the maturity period of existing loans from 2 to 5 years. If this is of interest, reach out to your lender.
- If you have a PPP loan of \$150,000 or less which has yet to be forgiven, when you are ready, ask your lender for the most recent and relevant forgiveness application.
- Track your expense information during the up to 24 weeks on the Funding Tracking Tool ([download the Excel sheet here](#)) on the PPS Website.
  - Calculate 60% of your loan amount to ensure the amount required for payroll costs to maximize forgiveness.
    - Determine the 25% salary reduction threshold for each employee you intend to reduce pay for in order to reduce risk for reduction in forgiveness
    - Document your FTEs/pay period and attempt to restore numbers to previous amounts to reduce risk for reduction in forgiveness.
    - Document your attempts to re-hire or high similarly skilled replacement employees
    - If relevant, document your inability to return to the same level of business activity as before February 15, 2020 due to standards established by HHS, the CDC, or OSHA from March 1-December 31, 2020 related to sanitation, social distancing, and other COVID-19 safety requirements.
    - Consider holding full disbursement of funds until end of the covered period to allow manipulation of percentages if law allows
  - Utilize funds to pay rent/utilities during the period (ie, postpone abatement)
- Compile supporting documents in folders broken down by Payroll costs and Non-payroll costs.
- Determine your tolerance for utilizing the funds as per forgiveness guidelines during the 8 weeks versus accepting funds as non-forgiven at 1% interest rate.