

Finance Alert

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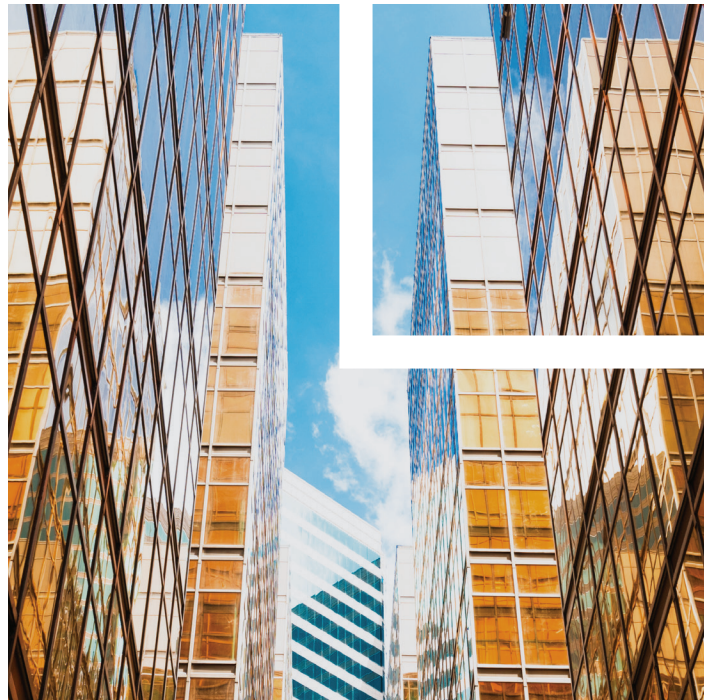
PPP Relaunches; Now Offers Second Draw Loans

Some long-awaited changes to the Paycheck Protection Program (PPP) are here. As part of the 2021 consolidated appropriations bill signed into law on Dec. 27, 2020, the “Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act” (Economic Aid Act) relaunched the PPP, extending it through March 31, 2021, and enacted a number of significant updates to the program for current and future PPP loans. The Small Business Administration (SBA) subsequently released interim final rules (IFRs) in response to the changes.

Although a good deal of guidance and guidelines regarding PPP loans already exist, which should make the relaunch of the program less chaotic than it was last spring, the SBA will release further guidance and interpretations as the program progresses, particularly with respect to forgiveness. The SBA and Department of Treasury have consolidated PPP materials on their websites, which are a helpful resource.

Key Takeaways

- PPP borrowers can spend PPP funds on—and apply for forgiveness for—new categories of expenses in addition to payroll costs, utilities and mortgage interest. Borrowers can opt for either an eight- or 24-week covered spending period for forgiveness.
- Borrowers with existing PPP loans may qualify for a second draw loan.
- The forgiveness process is simplified for borrowers with loans up to \$150,000. The SBA has enacted new exemptions for calculating forgiveness reduction percentages and modified the deadlines for borrowers to cure employee reductions.
- The Economic Aid Act requires the SBA to submit to Congress an audit plan for conducting forgiveness reviews and audits of PPP loans, including metrics to determine which PPP loans will be audited.



The SBA's [first IFR](#), by its terms, consolidates and restates 19 prior PPP interim final rules, and specifically states that it should be interpreted consistently with the FAQs posted on the SBA and U.S. Department of Treasury websites. The [second IFR](#) implements the PPP Second Draw Loan provisions of the Economic Aid Act, and states that the first IFR and SBA FAQs also apply to second draw loans. A [third IFR](#) consolidates prior rules related to forgiveness and reviews of PPP loans and incorporates changes made by the Economic Aid Act.

Some of the more significant changes enacted by the Economic Aid Act are discussed below. These changes apply to both existing PPP loans and PPP loans obtained after the effective date of the Economic Aid Act.

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More Permissible Uses for PPP Funds

In addition to payroll costs, utilities and mortgage interest, PPP borrowers are now permitted to spend PPP funds on and apply for forgiveness for:

1. Operations expenses, including payment 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.
2. Costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation.
3. Supplier costs, defined as expenditures made for the supply of goods that are essential to the operations of the entity at the time at which the expenditure is made and that are made pursuant to a contract, order or purchase order in effect at any time before the covered period with respect to the applicable covered loan (or, for perishable goods, pursuant to a contract, order or purchase order in effect at any time during the covered period of the loan).
4. Qualifying worker protection expenditures, generally defined as expenditures to facilitate the adaptation of the business to comply with requirements established or guidance issued by the Centers for Disease Control and Prevention (CDC) or other federal, state or local authority related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19, including expenditures related to personal protective equipment and installation of physical barriers, an air filtration system, expansion of additional indoor or outdoor space, and on-site or off-site screening capabilities.

Borrower Can Choose an Eight- or 24-Week Covered Period

The covered period during which eligible expenditures were subject to forgiveness was originally eight weeks but was changed to 24 weeks. Entities that had already applied for loans had the option of keeping the eight-week period. The definition of covered period has now

been amended to allow a borrower to select a covered period of either eight or 24 weeks, both starting from the date of disbursement of loan proceeds.

Simplified Forgiveness Process for Loans Up to \$150,000

While Congress in the final bill did not implement automatic forgiveness for loans up to \$150,000 as had been hoped, borrowers will now have a significantly streamlined forgiveness application to complete. The application will be no more than one page and will only require borrowers to describe the number of employees the borrower was able to retain due to the PPP loan, the estimated amount of the loan spent on payroll costs, and the total loan value.

De Minimis Exemptions to Forgiveness Reductions

The SBA has enacted some de minimis exemptions for calculating any reduction in amounts eligible for forgiveness. Under the PPP, the amount of the loan eligible for forgiveness is subject to a reduction percentage equal to the reduction percentage in average full-time equivalent (FTE) employees during the covered period, unless the borrower cures the FTE reduction.

The IFRs state that the cure period for loans made after Dec. 31, 2020, is the end of the covered period for the loan. Because borrowers can now choose an eight- or 24-week covered period, the SBA is aligning the cure period with the covered period instead of setting a single deadline (which was Dec. 31, 2020, for PPP loans made in 2020).

Additionally, if an employee is fired for cause, voluntarily resigns or voluntarily requests a schedule reduction, the borrower can still count the employee at the same FTE level. The borrower must retain documentation demonstrating the reason for the reduction.

Transparency With Respect to Loan Audits

The SBA is required within 45 days of the effective date of the Economic Aid Act to submit to Congress an audit plan that details the policies and procedures for conducting forgiveness reviews and audits of PPP loans, and the metrics that will be used to determine which PPP loans will be audited. Requiring the SBA to establish

audit guidelines should provide borrowers with a better idea of what to expect during an audit and give SBA less discretion in choosing which loans to audit.

Existing PPP Loans May Be Eligible for Increase

If a PPP borrower either returned some of the PPP funds it originally received or did not accept the full amount for which it was approved, the borrower may be able to reapply for a loan in the amount of the returned funds or an increase of the loan amount to the amount originally approved.

Borrowers in Bankruptcy Remain Ineligible; SBA Could Make Them Eligible

Currently, companies in bankruptcy are ineligible for PPP loans. The Economic Aid Act states that a debtor in bankruptcy can obtain a first or second draw loan with approval of the court. That section of the act is not effective until the SBA administrator notifies the Executive Office of the United States Trustee of the eligibility, however. So far, the SBA has declined to do so and has given no indication that it intends to exercise that authority.

Second Draw Loans

The Economic Aid Act creates a new section of the PPP allowing for qualifying borrowers who received a PPP loan to apply for a second loan. These second draw loans have the same terms and conditions as first draw PPP loans and are subject to the same rules and restrictions (such as the SBA's affiliation rules). The forgiveness process and criteria are also the same, including the requirement that the amount of forgiveness is proportionally reduced to the extent that less than 60% of loan proceeds are used for payroll costs.

Loan Amount: Second draw loans are available up to the lesser of 2.5 times the average monthly payroll in either (at the borrower's choice) the one-year period before the date the loan is made or for 2019, or \$2 million. Hospitality and food services businesses are eligible for loans up to 3.5 times the average monthly payroll, with an overall cap of \$2 million.

Eligibility Criteria: To be eligible, borrowers must have no more than 300 employees (down from the 500-employee threshold for PPP loans) and must be able to demonstrate a reduction in gross receipts of at least 25%. For loans up to \$150,000, the borrower can self-certify that it meets the revenue loss requirement, although it may still need to provide documentation of the revenue loss when it applies for forgiveness. News organizations, housing cooperatives, 501(c)(6) entities and destination marketing companies that meet certain criteria are also eligible.

Companies that are ineligible for first draw PPP loans are ineligible for second draw loans. In addition, a number of entities are specifically excluded from eligibility, including lobbying firms; public companies; entities located in, or with significant investors or board members organized or located in, the People's Republic of China or the Special Administrative Region of Hong Kong; and entities that received a shuttered venue operations grant under the Economic Aid Act.

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