

Paycheck Protection Program extended and improved

by year-end budget and COVID-19 stimulus package.





The Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (“Economic Aid Act”) enacted Dec. 27, 2020, contains important changes to the Paycheck Protection Program (PPP). The Economic Aid Act extends the authority of the Small Business Administration (SBA) to make additional PPP loans through March 31, 2021. It revises certain rules relating to PPP loans, such as expanding the types of expenses that qualify for forgiveness, and allows certain businesses that had a PPP loan under the CARES Act (called a First Draw Loan) to obtain a Second Draw Loan.

The SBA has issued two rules to provide guidance for these changes:

- 1 The [Consolidated PPP Rule](#) addresses changes to PPP loans generally, including provisions applicable to both First Draw and Second Draw Loans.
- 2 The [Second Draw Rule](#) addresses provisions that apply only to Second Draw Loans.

General changes to the PPP

Additional clarifications and types of expenses eligible for forgiveness include:

- The Economic Aid Act clarifies that group life, disability, vision and dental insurance benefits qualify as payroll costs.
- The following new types of expenses qualify for forgiveness:
 - Covered operations expenditures: costs for certain software, cloud computing, and other human resources and accounting needs.
 - Covered property damage costs: costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance.
 - Covered supplier costs: certain costs relating to supplies that are essential to the business, including perishable goods.
 - Covered worker protection expenditures: costs to facilitate compliance with requirements or guidance issued by governmental agencies in connection with safety concerns related to the COVID-19 pandemic.

- The expanded definition of qualifying expenses applies to loans made under the PPP before, on or after Dec. 27, 2020, except for borrowers who already had their loans forgiven.
- The requirement that at least 60% of loan proceeds must be used for payroll cost in order to obtain full loan forgiveness still applies.

Covered loan period: The borrower may elect a covered loan period ending at the borrower's choice **between** eight and 24 weeks. Previously, the covered loan period was either eight or 24 weeks, but buyers could apply for loan forgiveness in accordance with SBA rules before the end of the covered loan period.

Simplified forgiveness application for loans under \$150,000: Reduced documentation requirements now apply to borrowers with loans less than \$150,000, which is intended to streamline the loan forgiveness process.

Other changes: A number of other changes are made by the Economic Aid Act, including the following:

- The types of eligible borrowers are expanded to include 501(c)(6) tax-exempt organizations, housing cooperatives, destination-marketing operations and eligible news organizations.
- New bankruptcy procedures allow certain small-business debtors to access a PPP loan if approved by the bankruptcy court.
- Certain borrowers may reapply for, or request an increase of, their First Draw Loan.
- Publicly traded companies and certain other types of businesses are no longer eligible for a PPP loan, including a Second Draw Loan.
- PPP loan proceeds may not be used for lobbying activities or expenses.



Second Draw Loans

The eligibility requirements for Second Draw Loans are narrower than the eligibility requirements for First Draw Loans. Eligible businesses that previously received a First Draw Loan, including sole proprietors, independent contractors, and S corporations are generally eligible for a Second Draw Loan if the business:

- Employs no more than 300 employees or, in the case of certain businesses, including hotels, restaurants and certain news organizations, employs no more than 300 employees at each physical location;
- Has experienced a 25% reduction in gross receipts in a calendar quarter in 2020 compared to the comparable quarter in 2019; and
- Has already used or will use the full amount of its first PPP loan before the Second Draw Loan is disbursed.

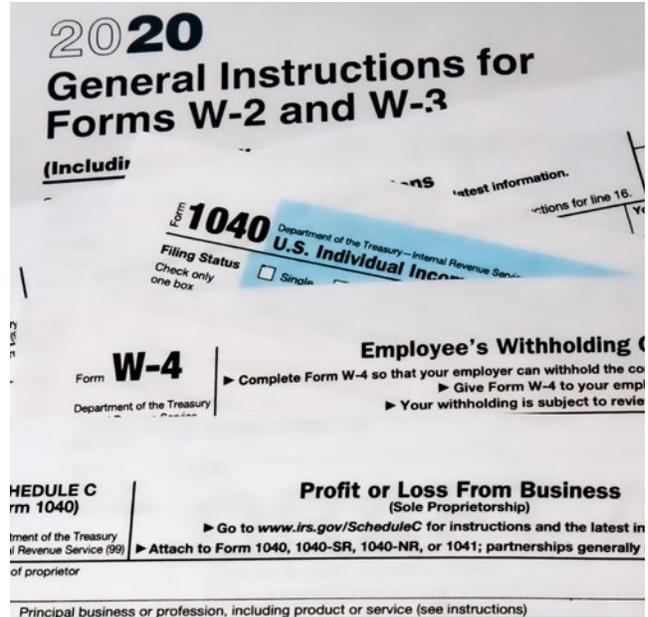
The maximum amount of a Second Draw Loan for most borrowers is the lesser of 2.5 times their average monthly payroll. For businesses with a North American Industry Classification System (NAICS) code 72 (Accommodation and Food Services), the maximum Second Draw amount is the lesser of 3.5 times average monthly payroll and \$2 million. In general, average monthly payroll is based either on calendar year 2020 or calendar year 2019.

Borrowers may, but are not required, to obtain a Second Draw Loan from the same lender that provided their First Draw Loan. Businesses should be sure the lender is aware that they are applying for a Second Draw Loan.



IRS position on nondeductibility of expenses paid with PPP loan proceeds is reversed

Under the original PPP provisions in the CARES Act, the IRS took the position that because the amount of a PPP loan that is forgiven is not includible in income, any expenses paid with proceeds from a forgiven PPP loan were not deductible. Although a number of key members of Congress urged the IRS to reverse this position because it was contrary to congressional intent, no change was made. Congress has now resolved this issue favorably by changing the law to make it clear that the amount of a PPP loan that is forgiven is tax-free and taxpayers may deduct expenses paid with forgiven PPP loan amounts. The IRS has already issued new guidance reversing their prior position.



Conclusion

The PPP has been a very popular program, providing needed funds to many small businesses impacted by the COVID-19 pandemic. The changes made to the PPP by the Economic Aid Act will allow many businesses to obtain additional relief, including through a Second Draw Loan. This article provides a high-level overview of key changes. The details will vary based on the particular business situation, so businesses should consult their own lender or other advisers to understand how the new rules will work for them.

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