



Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act

EFFECTIVE DATE: Adjustments to, and expansions of, the original Paycheck Protection Program “shall be effective as if included in the CARES Act.” Within 10 days of the passage of the supplemental relief package, the Small Business Association “shall issue regulations to carry out this Act.” So, you should be able to enjoy the expanded benefits immediately, and we should anticipate additional guidance from the SBA imminently.

Payroll Protection Program (PPP)

Impact on Existing PPP Loans

TAX TREATMENT: Regular business expenses paid for with PPP loan proceeds shall be deductible for tax purposes (previously, IRS rule prevented this).

EXPANDED LIST OF EXPENSES QUALIFYING FOR FORGIVENESS (viz. to existing and new PPP Loans): The list of expenses that PPP funds can be used for that qualify for loan forgiveness has been expanded to include:

- “operations expenses” defined as payments for business software and cloud computing services and other human resources and accounting needs that facilitate business operations
- “supplier costs” defined as payments to a supplier for goods that are essential to the operations of the borrower pursuant to a contract or purchase order in effect before the PPP loan is disbursed or with respect to perishable goods, in effect at any time;
- “worker protection expenses” defined as operating or capital expenditures to comply with public health guidance related to COVID-19 (e.g., sneeze guards and the purchase of personal protective equipment (PPE));

- “covered property damage costs” defined as costs related to property damage or looting due to public disturbances in 2020 that are not covered by insurance or other compensation.

[REMEMBER: IT IS STILL THE CASE THAT NOT MORE THAN 40% OF THE FORGIVEN AMOUNT CAN BE FOR NON-PAYROLL COSTS, WHICH MAY LIMIT HOW MUCH OF YOUR LOAN CAN BE FORGIVEN.]

LOAN FORGIVENESS REDUCTION: If you also received an EIDL grant, your PPP loan forgiveness will no longer be reduced by the amount of the grant. This is likely a significant one for many outfitter operations.

LOAN FORGIVENESS PERIOD: The period for which expenses count toward loan forgiveness will begin on the date of loan origination and end on a date of your choosing that is between 8 and 24 weeks after origination.

SIMPLIFIED APPLICATION: If your loan was for less than \$150,000, there will be a simplified one-page application process for loan forgiveness.

*CAN I MAKE ADJUSTMENTS TO MY ORIGINAL PPP LOAN WITH THE NEW REQUIREMENTS?
When the seasonal calculation for a loan amount was expanded, businesses were given the opportunity to reapply and adjust their loan calculation. If you did not make an adjustment at the time, you should still be eligible to adjust your loan.*

*WHAT IF MY LOAN HAS ALREADY BEEN FORGIVEN?
If you have applied for and received forgiveness for your original PPP loan, you will not be able to go back in and take advantage of the additional covered expenses. You may, however, pursue a second draw loan, though the requirements are somewhat different, including a maximum limit of 300 employees for eligible businesses as opposed to 500 employees.*

Impact on Exhausted PPP Loans (i.e., initial PPP loan expended in full)

PPP SECOND DRAW LOANS: The brand new “Second Draw” program is for small businesses, non-profits, sole proprietors, and independent contractors who have exhausted their initial PPP loan. The program will make new loans through March 31, 2021 or until the new funding is exhausted.

- **Eligibility:** Eligible self-employed individuals, seasonal employers, non-profit organizations, sole proprietors, and independent contractors are all eligible for a second draw. You are eligible for a second draw loan if:
 1. you have exhausted your first PPP loan, and

2. you have less than 300 employees, and
3. you have experienced a greater than 25% reduction in gross receipts during the first, second, third, or fourth quarter in 2020 relative to the same quarter in 2019.

**Entities engaged primarily in political or lobbying activities are not eligible for a second draw.

- **Loan Amount:** The maximum loan amount is the average monthly payroll costs for the entity during the 12 months prior to the loan or, at the election of the borrower, 2019 multiplied by 2.5 (or 3.5 for employers in the accommodation and food service industry).
- Seasonal employers utilize average monthly payroll costs for a 12-week period between February 15, 2019 and February 15, 2020.

WHAT TIME PERIOD SHOULD I USE TO DETERMINE MY ELIGIBILITY FOR A PPP SECOND DRAW LOAN?

An eligible entity should be able to demonstrate that it “had gross receipts during the first, second, third, or... fourth quarter in 2020 that demonstrate no less than a 25 percent reduction from the gross receipts of the entity during the same quarter in 2019.”

If a business was in operation on February 15, 2020, but not in 2019, it is eligible if “gross receipts during the second, third, or, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the first quarter of 2020.”

WHAT IS THE LIMIT TO MY LOAN AMOUNT FOR A SECOND DRAW?

2 1/2 times “the average total monthly payment for payroll costs incurred or paid by the eligible during” either “the 1-year period before the date on which the loan is made; or the calendar year 2019,” for a maximum of \$2 million. You may choose the calculation that works best for you.

If you are an establishment providing customers with lodging and/or preparing meals, snacks, and beverages for immediate consumption, with an NAICS code of 72, you are eligible for 3 1/2 times “the average monthly payment for payroll costs incurred... during the 1-year period before the date on which the loan is made, or calendar year 2019,” depending upon which calculation you prefer.

CAN SEASONAL EMPLOYERS CALCULATE THEIR MAXIMUM RETURNS DIFFERENTLY?

Seasonal employers can draw 2 1/2 times “the average monthly total for payroll costs incurred or paid... for any 12-week period between February 15, 2019 and February 15, 2020,” up to a maximum of \$2 million.

Impact for New PPP Applicants

DIDN'T RECEIVE A PPP LOAN BEFORE? For new PPP applicants, the loan process will largely remain the same. However, some significant changes have been introduced, including:

- 501(c)(6) NonProfits (Trade Associations), like IOGA, are eligible in the new legislation for PPP Loans (where they were not previously).
- The maximum loan amount is now \$2 million (was \$10 million).
- Group insurance payment can be included in your payroll costs when determining your maximum loan amount.
- Seasonal employers have greater flexibility in picking the 12-week period between February 15, 2019 and February 15, 2020 used to determine payroll costs and thus maximum loan amount.
- New borrowers have until the end of the covered period of their loan (up to 24 weeks after origination) to restore a reduction in their number of employees or reduced wages in order to avoid having their loan forgiveness reduced.



Additional Business Relief

Expanded Employee Retention Tax Credit: The new law significantly expands the employee retention tax credit beginning on January 1, 2021. The credit expires on June 30, 2021.

- The prior credit was 50% on \$10,000 in qualified wages for the whole year (or a maximum of \$5,000 per employee). The new credit is 70% on \$10,000 in wages per quarter (or a maximum \$14,000 per employee through June 30th).

- Employers can now also receive both the Employee Retention Tax Credit and a PPP loan, just not to cover the same payroll expenses.

EIDL Grants:

The new law reopens the \$10,000 EIDL Grant program. Priority for the full amount of the EIDL grant will be given to small businesses with less than 300 employees, located in low-income communities, who have experienced a 30% reduction in gross receipts during any 8-week period between March 2, and December 31, 2020 compared to a comparable 8-week period before March 2.

The Definition of "Low-income community" as defined in section 45D(e) of the Internal Revenue Code of 1986 means any population census tract if:

- (A) the poverty rate for such tract is at least 20 percent, or
- (B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or
- (ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

SBA Loan Debt Forgiveness:

The new law resumes the government payment of monthly principal and interest on small business loans guaranteed by the SBA under the 7(a), 504, and Microloan programs. Borrowers with loans approved by the SBA prior to the CARES Act will receive an additional three months of payments beginning in February of 2021. Those payments will be capped at \$9,000 per borrower per month.

After that, certain borrower will receive an additional five months of payments, including: borrowers with SBA microloans or 7(a) Community Advantage loans or borrowers with any 7(a) or 504 loan in hard hit sectors, including: entertainment and recreation; food service and accommodation; apparel manufacturing; clothing and clothing accessories stores; sporting goods, hobby, book and music stores; transit and ground passenger transportation; scenic and sightseeing transportation.