



About The Paycheck Protection Program¹ and EIDL Updates ****New Changes Made By Congress in December 2020****

SUMMARY: In December 27, 2020, new legislation was enacted to extend the life of a vital program available to Main Street businesses: the *Paycheck Protection Program* (PPP). This new legislation creates a second round of PPP loans for eligible businesses, makes new businesses eligible for a first-time PPP loan (as well as a second-draw loan), and makes other key programming changes.

PPP UNDER THE ORIGINAL CARES ACT:

In March 2020, President Trump signed into law the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*, creating the PPP for small employers, self-employed individuals, and “gig economy” workers.² A reminder of PPP loan terms under the original “first-draw” loan framework is [available here from the SBA](#). Authority to use the initial PPP program ended on August 8, 2020. At the time that PPP closed, the Small Business Administration (SBA) had approved over 5.2 million loans worth \$525 billion (and the average loan size was approximately \$100,729).

***NEW* PPP “Second Draw” Loans:**

In December 2020, new legislation re-vitalizing the PPP program was enacted. The law now allows for a second round of PPP loans to eligible entities (referred to as “second draw” loans).³ Under this new framework, businesses are eligible for a second-draw if they have no more than 300 employees and can demonstrate at least a 25 percent reduction in gross receipts between comparable quarters in 2019 and 2020.⁴ Maximum loan size for second draw PPP loans are 2.5X average monthly payroll costs, up to \$2 million. Small businesses assigned to the industry NAICS code 72 (Accommodation and Food Services) may receive PPP second draw loans equal to 3.5X average monthly payroll costs. A borrower receives full loan forgiveness if it spends at least 60 percent of their PPP second draw loan on payroll costs over a time period of their choosing between 8 weeks and 24 weeks.

PPP SET ASIDES: The second-draw PPP loan program includes set-asides to support first-time PPP borrowers with 10 or fewer employees, second-time PPP borrowers with 10 or fewer employees, first-time PPP borrowers who have been made newly eligible, and second-time returning PPP borrowers. Additionally, the second-draw program provides for a set-aside for loans made by community lenders.

¹ [H.R.748](#), the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* (Public Law No. 116-136) was approved unanimously by the Senate on March 25, 2020, then by the House of Representatives on March 27, 2020, and signed into law by President Trump on March 27, 2020, creating the *Paycheck Protection Program*.

² The *CARES Act* made first draw PPP loan eligibility retroactive to February 15, 2020. While the *CARES Act* originally provided eight (8) weeks of cash flow assistance, Congress approved legislation on June 5, 2020 that increased the total available to 24 weeks (H.R.7010 - Paycheck Protection Program Flexibility Act of 2020; Public Law No: 116-142).

³ H.R. 133, the legislative vehicle for the *Consolidated Appropriations Act, 2021*, approved by the House and the Senate on December 21, 2020 and signed into law by President Trump on December 27, 2020.

⁴ Businesses with gross receipts during Q1, Q2 or Q3 2020 that were at least 25 percent less than the gross receipts from the same quarter in 2019 (applicants may use Q4 2020 if they apply after January 1, 2021).



NEWLY ELIGIBLE BUSINESSES: If a business is *newly eligible* for PPP under the new statutory framework, the business is eligible to apply for a first-draw loan (under second-draw program terms), and then it may also be eligible for a second-draw loan if it exhausts all of its first-draw loan funding and applies for a second-draw loan before March 31, 2021.

ELIGIBLE EXPENDITURES: Under the initial framework, if an employer maintained payroll, the expenditures not used on payroll that were eligible for forgiveness included: covered payroll costs, interest on mortgage obligations, rent, and utilities. Additional covered costs now include: supplier costs on existing contracts and purchase orders, including the cost for perishable goods at any time; worker protective equipment and adaptive costs; technology operations expenditures; and property damage costs due to public disturbances in 2020.

I AM AN INDEPENDENT CONTRACTOR OR GIG ECONOMY WORKER, AM I ELIGIBLE? Yes. Sole proprietors, independent contractors, gig economy workers, and the self-employed are eligible—for both first-draw and second-draw loans.

ARE 501(c)6 ORGANIZATIONS ELIGIBLE? 501(c)6 organizations, including Destination Marketing Organizations, are newly eligible for PPP, so long as certain conditions are met: the entity does not receive more than 15% of their receipts from lobbying activities; such lobbying activity does not comprise more than 15% of the entities' total activities; the cost of such lobbying activity does not exceed \$1 million during the tax year ending February 15, 2020; and the entity does not employ more than 300 employees.

NEWSPAPERS, T.V., AND RADIO STATIONS: Local newspapers, T.V., and radio stations previously ineligible by their affiliation are now eligible for PPP.

ARE CHURCHES AND RELIGIOUS ORGANIZATIONS ELIGIBLE? Churches and religious organizations are eligible for second-draw PPP loans.

WHAT IF I HAVE NOT EXHAUSTED MY FIRST-DRAW LOAN? If you have not exhausted your first-draw loan, but can demonstrate to the SBA that the funding is obligated, you may be eligible for a second-draw loan (under second-draw program terms).

APPLYING: You can apply for the PPP—first- or second-draw—through any lending institution approved to participate in the program through the existing Small Business Administration (SBA) 7(a) lending program, and additional lenders approved by the Department of Treasury. You can call your bank or find SBA-approved lenders in your area through SBA's online [Lender Match](#) tool. You can call your local [Small Business Development Center](#) or [Women's Business Center](#) and they will provide free assistance. Lenders approved to provide PPP loans will be eligible to make second draw loans.

WHEN IS THE DEADLINE FOR PPP? SBA will consider applications through March 31, 2021 (for new first draw loans and for second draw loans).



IS THERE STILL A NECESSITY CLAUSE? Second-draw PPP terms have not removed or changed the “necessity requirement.” All borrowers must certify that current economic uncertainty makes its loan request necessary to support the ongoing operations, as of the date on which the PPP loan application is submitted.

WHAT IS THE COVERED PERIOD OF THE LOAN? The covered period during which expenses can be forgiven extends from February 15, 2020 to March 31, 2021. Borrowers select their covered period, which can be any date between eight (8) to 24 weeks they want to count towards the covered period, which can start as early as February 15, 2020.

DOES THE PROGRAM COVER ANY COMPENSATION FOR THOSE MAKING OVER \$100K? The program covers payroll costs up to \$100,000. For example, an employer would be able to use \$100,000 of the \$125,000 salary for the calculation of the loan amount and subsequent forgiveness.

WHEN IS THE LOAN FORGIVEN? The loan is forgiven at the end of the 24-week period after you take out the loan. Borrowers will work with lenders to verify covered expenses and proper amount of forgiveness. For borrowers with loans under \$150,000, a simplified loan forgiveness process is available (for both first and second draw loans). Borrowers with a loan that is over \$150,000 have the option of deferring loan payments for 10 months before having to make payments, and can apply for forgiveness any time after the business’ covered period is complete.

HOW MUCH OF MY LOAN WILL BE FORGIVEN? The purpose of the *Program* is to help you retain your employees, at their current base pay. Therefore, 60% of your loan must be spent on payroll. If less than 60% of the loan is used on payroll, the forgiveness will be reduced proportionally. If you have already laid off some employees, you can still be forgiven for the full amount of your payroll cost if there is an attempt to rehire your employees.

AM I RESPONSIBLE FOR INTEREST? If the full principal of the loan is forgiven, the borrower is NOT responsible for the interest accrued in the 24-week covered period. The remainder of the loan that is NOT forgiven will operate according to the loan terms agreed upon by you and the lender.

ARE PPP LOANS CONSIDERED TAXABLE INCOME? PPP loans will not be included as taxable income. Under the legislation approved in December 2020, expenses paid with the proceeds of a PPP loan that is forgiven are tax-deductible (second-draw loans and prior PPP loans).

WHAT ARE THE INTEREST RATE AND TERMS FOR THE LOAN AMOUNT THAT IS NOT FORGIVEN? The terms of the loan not forgiven may differ on a case-by-case basis. However, the maximum terms of the loan feature a 10-year term with interest capped at 4% and a 100% loan guarantee by the SBA. You will not have to pay any fees on the loan, and collateral requirements and personal guarantees are waived. Loan payments will be deferred for at least six months and up to one year starting at the origination of the loan.



I TOOK OUT A BRIDGE LOAN THROUGH MY STATE, AM I ELIGIBLE TO APPLY? Yes.

IF I HAVE APPLIED FOR, OR RECEIVED AN EIDL RELATED TO COVID19 BEFORE THE PROGRAM BECAME AVAILABLE, WILL I BE ELIGIBLE FOR A FULL PPP LOAN?

Yes. As of December 2020, EIDL advances will no longer be subtracted from PPP forgiveness. Borrowers that have already applied for and received loan forgiveness may now amend their application to request that the \$10,000 EIDL Advance (or amount actually received) not reduce their forgiveness amount and request repayment. Receiving EIDL will have no bearing on second draw PPP loans.

IF I PREVIOUSLY APPLIED FOR AND WAS ELIGIBLE TO RECEIVE AN EIDL GRANT BUT IT WAS REDUCED OR NOT GRANTED DUE TO LACK OF FUNDS, ARE THERE MORE OPTIONS?

Yes. If a qualifying business received an EIDL grant for less than \$10,000 they can now receive the difference to get them to the full \$10,000 grant amount. When SBA reduced these loans to \$1,000 per employee many of the smallest businesses received smaller loans than \$10,000. Further, any qualified business who applied after the money was exhausted can apply for a full \$10,000 grant.

IS THE EIDL PROGRAM ACCEPTING NEW APPLICATIONS? Yes. Qualifying businesses may apply for the EIDL grant program. Businesses will qualify to receive the full \$10,000 advance if: they are in a low income area, have less than 300 employees, and suffered economic loss greater than 30 percent. Other business may qualify for varying amounts based on expected SBA guidance.

SBA guidance will detail how to apply/reapply for EIDL grants, clarify any eligibility requirements, and the SBA will notify anyone who received a previous EIDL grant or who applied but did not receive one because funding was exhausted that they may be able to apply for additional EIDL grant funds.

This document was prepared as an informational resource and should not be considered legal or business counsel. Please reach out to CoronavirusHelp@braun.senate.gov for questions, concerns, or additional assistance. Last updated December 29, 2020.