

Paycheck Protection Program – Round 2

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Overview

- On December 27, 2020, President Trump signed the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the “Economic Aid Act”). The Economic Aid Act extends the authority to make Paycheck Protection Program (“PPP”) loans through March 31, 2021, allocates an additional \$284 billion to the PPP and revises certain PPP requirements.
- The SBA has issued two interim final rules to implement the PPP Provisions of the Economic Aid Act. The first rule provided guidance relating to new PPP loans made under the Economic Aid Act, as well as applications for loan forgiveness on existing PPP loans where the loan forgiveness payment has not been remitted. The second rule relates to second draw PPP loan requirements.



Key Provisions of the Economic Aid Act

- A lender may rely on any certification or documentation submitted by a borrower for an initial or second draw PPP loan and no enforcement action may be taken against the lender relating to loan origination or forgiveness, if: (1) the lender acts in good faith relating to loan origination or forgiveness; and (2) all relevant federal, state, local and other statutory and regulatory requirements are satisfied;
- Eligible applicants that did not receive a PPP loan prior to August 8, 2020, will now have the ability to apply for a PPP First Draw Loan on or before March 31, 2021;
- Eligibility for PPP loans has been revised to include additional types of entities;
- Borrowers are now able to choose the length of their covered period so long as it is at least eight weeks and is not longer than 24 weeks;



Key Provisions of the Economic Aid Act *(continued)*

- Allows certain small businesses (300 or fewer employees) to obtain a second PPP loan if they experienced a significant revenue decline in any 2020 quarter compared to the same quarter in 2019. Loan amount may be up to an employer's average total monthly payroll times 2.5 (3.5 for eligible accommodation and food service businesses), and the maximum loan amount for second draw PPP loans is \$2 million;
- Expanded the types of expenses for which all PPP loans can be used, which applies to existing PPP loans (except in the event forgiveness has already been obtained) and new loans; and
- Forgiveness application for loans under \$150,000 will be simplified to a one-page certification (currently being developed by SBA).



General Requirements and First Draw Loans

- SBA priority is to ensure increased access to PPP for minority, underserved, veteran, and women-owned business concerns. SBA continues is calling upon its lending partners to redouble their efforts to assist eligible borrowers in underserved and disadvantaged communities.
- At least \$15 billion is being set aside for First Draw PPP loans to eligible borrowers with a maximum of 10 employees or for loans of \$250,000 or less to eligible borrowers in low- or moderate-income neighborhoods
- All federally insured depository institutions are eligible to make PPP loans unless they currently are designated in Troubled Condition by their primary Federal regulator or are subject to a formal enforcement action with their primary Federal regulator that addresses unsafe or unsound lending practices.



General Requirements and First Draw Loans *(continued)*

- Lenders have to register in SAM.gov to make PPP loans. PPP lenders will have 30 days from the date of the first PPP loan disbursement made by them to complete SAM registration and provide SBA with the lender's unique entity identifier.
- 501(c)(6) organizations and destination marketing organizations are eligible for PPP loans if they meet specified criteria.
- Covered eligible expenses have been expanded and now includes the following: payroll costs, rent, mortgage interest, utilities, operations expenditures, property damage costs, supplier costs, and worker protection expenditures.
- At least 60 percent of the PPP loan proceeds shall be used for payroll costs.



Loan Underwriting

Loan Underwriting

- Confirm receipt of borrower certifications contained in Paycheck Protection Program Borrower Application Form (SBA Form 2483) issued by the SBA or lender's equivalent form;
- Confirm receipt of information demonstrating that a borrower was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees or had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;
- Confirm the dollar amount of average monthly payroll costs for 2019 or 2020 by reviewing the payroll documentation submitted with the borrower's application; and
- Follow applicable BSA requirements:
 - PPP loans for existing customers will not require re-verification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.



Reliance on Borrower Certifications

- A lender may rely on any certification or documentation submitted by an applicant for a PPP loan or an eligible recipient or eligible entity that
 - a) is submitted pursuant to all applicable statutory requirements, regulations, and guidance related to a PPP loan; and
 - b) attests that the applicant, eligible recipient, or eligible entity, as applicable, has accurately provided the certification or documentation to the lender in accordance with the statutory requirements, regulations, and guidance related to PPP loans.
- With respect to a lender that relies on such a certification or documentation related to a PPP loan, an enforcement action may not be taken against the lender, and the lender shall not be subject to any penalties relating to loan origination or forgiveness of the PPP loan, if the lender acts in good faith based on that reliance; and all other relevant Federal, State, local, and other statutory and regulatory requirements applicable to the lender are satisfied with respect to the PPP loan.



Lender Fees

- For PPP loans made on or after December 27, 2020, SBA will pay lenders fees, based on the balance of the financing outstanding at the time of disbursement of the loan, for processing PPP loans in the following amounts> the fees remain the same as in original PPP except for loans of not more than \$50,000, the fee will be an amount equal to the lesser of fifty (50) percent or \$2,500.
- SBA will pay the fee not later than 5 days after the reported disbursement of the PPP loan and, as required by the Economic Aid Act, may not require the fee to be repaid by the lender unless the lender is found guilty of an act of fraud in connection with the PPP loan.



PPP Loan Sales and Agent Fees

- A PPP loan may be sold on the secondary market after the loan is fully disbursed. A PPP loan may be sold on the secondary market at a premium or a discount to par value.
- Agent fees may not be paid out of the proceeds of a PPP loan. If a borrower has knowingly retained an agent, such fees will be paid by the borrower. A lender is only responsible for paying fees to an agent for services for which the lender directly contracts with the agent. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed:
 - One (1) percent for loans of not more than \$350,000;
 - 0.50 percent for loans of more than \$350,000 and less than \$2 million; and
 - 0.25 percent for loans of at least \$2 million.



Reapplication and Loan Increases

- The following borrowers can reapply or request an increase in their PPP loan amount:
 - If a borrower returned all of a PPP loan, the borrower may reapply for a PPP loan in an amount the borrower is eligible for under current PPP rules.
 - If a borrower returned part of a PPP loan, the borrower may reapply for an amount equal to the difference between the amount retained and the amount previously approved.
 - If a borrower did not accept the full amount of a PPP loan for which it was approved, the borrower may request an increase in the amount of the PPP loan up to the amount previously approved.
 - Any request for an increase must be submitted electronically in E-Tran on or before March 31, 2021, and is subject to the availability of funds. SBA will issue additional guidance on the process to reapply or request a loan increase.



Second Draw Loans

- A borrower is eligible for a Second Draw PPP Loan only if it has 300 or fewer employees and experienced a revenue reduction in 2020 relative to 2019.
- A Second Draw PPP Loan may only be made to an eligible borrower that (i) has received a First Draw PPP Loan, and (ii) has used, or will use, the full amount of the First Draw PPP Loan on or before the expected date on which the Second Draw PPP Loan is disbursed to the borrower.
- The borrower must have spent the full amount of its First Draw PPP Loan on eligible expenses under the PPP rules to be eligible for a Second Draw PPP Loan.
- The borrower must have experienced a revenue reduction of 25% or greater in 2020 relative to 2019. A borrower must calculate this revenue reduction by comparing the borrower's quarterly gross receipts for one quarter in 2020 with the borrower's gross receipts for the corresponding quarter of 2019.



Second Draw Loans *(continued)*

- The maximum loan amount for a Second Draw PPP Loan is equal to the lesser of 2.5 of the borrower's average monthly payroll costs or \$2 million (3.5 for eligible accommodation and food service businesses).
- The relevant time period for calculating a borrower's payroll costs for a Second Draw PPP Loan is either the twelve-month period prior to when the loan is made or calendar year 2019.



Second Draw Loans *(continued)*

- SBA will pay lenders fees for processing Second Draw PPP Loans in the following amounts:
 - for a Second Draw PPP Loan of up to (and including) \$50,000, in an amount equal to the lesser of: (A) 50 percent of the balance of the financing outstanding at the time of disbursement of the loan; or (B) \$2,500; and
 - for a Second Draw PPP Loan of more than \$50,000, in an amount that is:
 - a) 5 percent of the balance of the financing outstanding at the time of disbursement of the loan for a loan up to (and including) \$350,000; and
 - b) 3 percent of the balance of the financing outstanding at the time of disbursement of the loan for a loan above \$350,000.



Second Draw Loans *(continued)*

- PPP Second Draw Loan applicants must use the new SBA Form 2483-SD Borrower Application.
- Second Draw PPP Loans are eligible for loan forgiveness on the same terms and conditions as First Draw PPP Loans, except that Second Draw PPP Loan borrowers with a principal amount of \$150,000 or less are required to provide documentation of revenue reduction if such documentation was not provided at the time of the loan application.



Additional Resources

- **SBA PPP Lender Hotline** – (833) 572-0502
- **PPP Platform Resources:** <https://forgiveness.sba.gov> and <http://www.sba.gov/ppp>





Questions?

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