

# Update to the Paycheck Protection Program (PPP)

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On December 27, 2020, Congress passed a new round of stimulus to assist small businesses during the pandemic. This comes as a welcome relief to businesses, and will ideally carry them through the early part of 2021.

New loan applications are available through March 31, 2021, and previous borrowers are eligible for a second draw. The new law clarifies the tax position of forgiven loans that will benefit business.

Outlined here is a review of some of the key provisions in the new law.

## Background

The Paycheck Protection Program (PPP) is the small business loan component of the CARES Act passed by Congress on March 27, 2020. The program is administered by the Small Business Administration (SBA) and is intended for businesses to keep their workforces employed during the COVID-19 crisis. Broadly, under the program the maximum loan amount is 2 ½ times the trailing 12-month average monthly payroll costs up to \$10 million for eligible<sup>1</sup> borrowers. The key determinant for program eligibility is that “the current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

## Forgiveness

The loans are forgivable if all the employee retention criteria are met and the funds are used for eligible expenses such as payroll costs, mortgage interest payments, rent or utilities during either the 8- or 24-week period after disbursement of the funds. The interest rate on the loan is 1%. Some loans have a maturity of two years and others five years. No collateral or personal guarantees are required other than the certification<sup>2</sup> of need.

## Revisions and Interim Guidance

Since enactment, several interim laws, rules and guidance have been issued to explain and clarify the program. For example, application forms were revised, the loan forgiveness process was simplified for some borrowers, liability for certification was explained, eligible borrowers were further defined and guidance was issued on the consequences of the sale or merger of a business on the loan. In some cases, this guidance resulted in the return of some loans by large companies. The IRS also issued guidance stating that loan proceeds used to fund otherwise tax-deductible business expenses are not deductible if forgiven under the program.

<sup>1</sup> [Office of Advocacy – U.S. Small Business Administration](#)

<sup>2</sup> Eligible applicants include business concerns, 501(c)3 nonprofit organizations, tax exempt veteran organizations, tribal business concerns, sole proprietors, independent contractors and other self-employed individuals. An applicant must have been in operation on February 15, 2020 and the workforce headcount is not more than 500 employees subject to affiliation rules. Excluded industries include businesses primarily engaged in lending or investment and passive investment in real estate. Hedge funds and private equity firms are not eligible. Round two included 501 ( c ) 6 organizations that have no more than 300 employees. There is also a special grant provision for shuttered venue operators like movie theaters, museums, theaters and zoos.

## Results of Round 1

The initial bill authorized \$349 billion in loans. This program was rolled out on April 3, 2020, and was depleted within two weeks. Congress increased the available amount by \$310 billion later in April for a total of \$659 billion. The original deadline to apply for a loan was June 30, 2020, but later extended to August 8, 2020, at which point the program was closed.

As of August 8, 2020, the SBA reported that over 5.2 million loans were approved representing over \$525 billion. The average loan size was about \$100,000 and the number of participating lenders was 5,460.<sup>4</sup> Through November 2020, roughly \$83 billion in loans were requested to be forgiven.

## Seeking Advice

Throughout this period, businesses have been consulting with their advisors with regard to applying for funds, meeting the disclosure requirements and submitting loan forgiveness documentation.

## PPP Round 2: Key Provisions

On December 21, 2020, Congress approved another \$284 billion for PPP, with some changes to the original program. The president signed the bill into law on December 27, 2020.

### Expanded Benefits and Eligibility

Under the new provisions, applicants in the hard-hit industries of accommodation and food services (hotels and restaurants) are eligible for loans of 3 ½ times their average monthly payroll, subject to a \$2 million cap.

Round 2 also includes 501(c) (6) entities as eligible borrowers; these include trade associations, chambers of commerce and business leagues. Certain housing cooperatives and broadcast news organizations are included.

### Forgiveness Criteria Expanded

The program also revised the loan forgiveness criteria. Borrowers are required to spend at least 60% (the original law required 75%)<sup>3</sup> of the funds on payroll costs; the other 40% may be for mortgage interest expenses, rent and utility payments. The bill expands forgivable expenses to include costs related to providing personal protective equipment (PPE) and other such equipment to protect workers and the cost to comply with COVID-19—related federal, state and local health and safety requirements. Costs related to property damage resulting from public disturbances are also covered under Round 2 updates.

### Second Draws

Existing PPP borrowers may apply for a second loan if they have 300 or fewer employees and can show that they experienced a 25% reduction in gross receipts during a quarter in 2020 compared with the same quarter in 2019. The maximum for a second draw loan is \$2 million, a change from the \$10 million maximum allowed in the PPP first round. Seasonal employers and new entities are also limited to \$2 million. Second draw borrowers are ineligible if affiliated with the Peoples Republic of China or the Special Administrative Region of Hong Kong.

### Lenders Liability

Round 2 provides a liability shield for lenders if they rely on certifications and submitted documentation.

<sup>3</sup> The applicant is not required to demonstrate that it could not find credit anywhere else but is required to certify in good faith that the current economic uncertainty makes this loan request necessary to support ongoing operations.

<sup>4</sup> [Participating Lenders](#)

## Forgiven Loans and Deductible Expenses

The legislation also clarifies that businesses that receive PPP loans may deduct the expenses covered by forgiven loans. Ordinarily loan forgiveness is taxable income, but this is not the case under PPP. Round 2 makes clear that the borrower can deduct the expenses paid. It states that “no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided” by Section 1106 of the CARES Act. This supersedes IRS guidance under Rev. Rul. 2020-27 that such expenses were not deductible and results in a double tax benefit.

Round 2 provides a simplified forgiveness application for loans of \$150,000 or less. The certification form is one page in length.

## EIDL<sup>5</sup> Funds Not Offset

Borrowers are now not required to deduct the amount of any Economic Injury Disaster Loan (EIDL) advance from their forgiveness amount.

## Privacy<sup>6</sup>

Although there was some discussion of keeping the identity of borrowers private, participants should be aware that all loans are and will be posted on a public website.

## Program Availability

New PPP loans are available through March 31, 2021.

## Conclusion

Small businesses are the lifeblood of the U.S. economy, accounting for 44% of economic activity, creating two-thirds of net new jobs and driving U.S. innovation and competitiveness.<sup>7</sup>

As vaccines become available and business activity continues to recover, the latest round of stimulus will provide needed relief to a crucial part of the U.S. economy.

<sup>5</sup> The Paycheck Protection Program Flexibility Act (PPPFA) of June 5, 2020 reduced the percentage to be spent on payroll costs from 75% to 60%.

<sup>6</sup> [List of Borrowers](#) and [Application Form Round 1](#)

<sup>7</sup> In addition to PPP law, the new law allocates an additional \$20 billion to the Economic Injury Disaster Loan Program (EIDL).

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