Summary of Paycheck Protection Program (PPP) after enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act

As of February 16, 2021

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Introduction, SBA guidance and key dates

On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (the Act) became law as a part of the Consolidated Appropriations Act, 2021. The Act provides $284.5 billion of additional funding for the Paycheck Protection Program (PPP) through the U. S. Small Business Administration (SBA). The following is a review of key provisions of the PPP after enactment of this legislation.

The SBA issued guidance and forms after the Act that have been incorporated into this summary as of January 20, 2021.
Please refer to official SBA and U. S. Treasury guidance on the program for additional information.

Additional information is available in the AICPA's Frequently Asked Questions and other resources the AICPA and its Private Companies Practice Section (PCPS) have developed at www.aicpa.org/sba. Additionally, the AICPA Town Hall Series provides the latest news and updates on PPP and other business relief programs.

Key dates

The SBA began accepting applications from certain lenders on January 11, 2021. Acceptance of applications from all lenders began January 19, 2021.

Applications for PPP loans must be received by the SBA by March 31, 2021.

Approach and Strategies

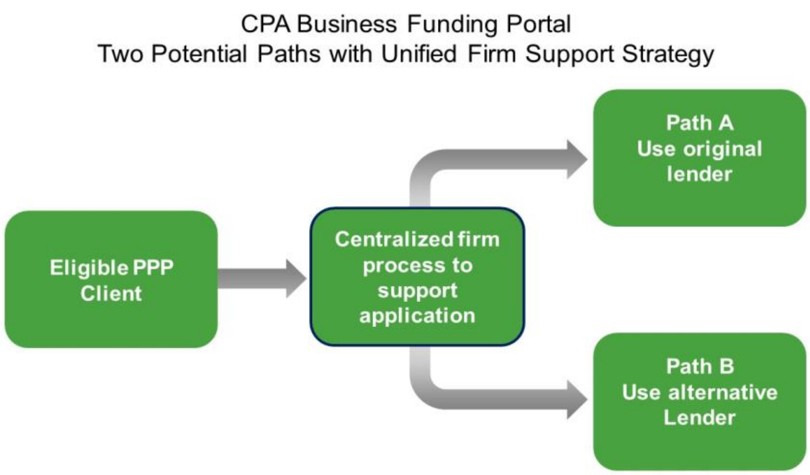
As mentioned on our AICPA Town Hall Series, firms need to approach PPP2 differently than they did PPP1. This starts with streamlining clients' PPP applications through one centralized platform, enabling your firm to deliver greater value, efficiency, and effectiveness around the PPP process.

Through the CPA Business Funding Portal (CPALoanPortal.com), which is a free solution, you can manage all your clients' PPP applications in one place. The solution also offers clients the ability to receive business relief funding directly through the portal with fintech lender Biz2Credit.

Regardless of whether your clients decide to use a traditional lender (such as a bank) or a fintech like Biz2Credit, you can have oversight of the PPP application process through the portal.

Borrowers may use their lender of choice. This could be their original PPP lender or a new lender. We recommend firms have a centralized approach to support both paths. Learn more about how The CPA Business Loan Portal can help meet your clients' unique lending needs.

If you use the CPA Business Funding Portal to submit applications to the SBA, you are eligible to receive agent fees as a paid subscriber.



For entities that did not receive a previous PPP loan and are receiving their first draw in 2021

Eligibility

Eligible entities who did not receive a first draw PPP loan in 2020 may now apply under the same basic terms as the previous round. The following entities may be eligible if they were in operation on February 15, 2020:

- Any business, 501(c)(3) non-profit organization (including faith-based organizations), 501(c)(19) veterans organization, or Tribal business concern (sec. 31(b)(2)(C) of the Small Business Act) with:
  - No more than 500 employees (affiliation rules apply, see discussion below), or
  - Meets either the SBA industry or alternative size standard
  - The SBA has indicated in their FAQ #36 that all employees, whether full-time, part-time or other basis are included in determining eligibility.
- Sole proprietors, independent contractors, and self-employed persons
  - Note: Partners in a partnership do not qualify for a PPP loan but the partnership entity may qualify.
- Any business with a NAICS Code that begins with 72 (Accommodations and Food Services) that has more than one physical location and employs less than 500 per location

Additionally, new categories of borrowers have been added via the Act:

- 501(c)(6) nonprofits (such as chambers of commerce) with 300 or fewer employees (subject to lobbying threshold: 15% of receipts, 15% of activities, $1M lobbying costs)
  - Professional sports leagues and organizations with the purpose of promoting or participating in a political campaign or other activity are not eligible.
- Destination marketing organizations with 300 or fewer employees (subject to lobbying threshold: 15% of receipts, 15% of activities, $1M lobbying costs)
- Local newspapers, TV and radio stations (NAICS code beginning with 511110 or 5151) that make a good faith certification that PPP will be used to support expenses at the component of the organization that produces or distributes locally focused or emergency information
- Housing cooperatives with 300 or fewer employees

The following is a **partial list of ineligible entities**, which includes some added via the Act and subsequent guidance:

- An entity that has permanently closed
- Businesses not in operation on February 15, 2020 (Note: PPP is designed for entities in operation prior to the COVID-19 pandemic.)
- Entities receiving Shuttered Venue Operator Grants such as theaters, museums and zoos.
  - *This program, described in Section 324 of the Act, is not open as of January 20, 2021.*
- Publicly traded businesses
- Lobbying organizations
- Hedge funds or private equity firms
- Entities affiliated the People's Republic of China

- Those registered under the Foreign Agents Registration Act
- If President, Vice President, head of an Executive department, Member of Congress or their spouse own at least 20% of any class of equity
- Entities listed in 13 C.F.R 120.110, unless otherwise made eligible (page 85)
- Household employers
- Entities in bankruptcy
- Other

Details on eligible and ineligible entities are provided in the Interim Final Rule on Paycheck Protection Program as Amended by Economic Aid Act and should be consulted for additional information.

Affiliation rules

For PPP loan eligibility purposes, entities are subject to the affiliation rules under 13 C.F.R. 121.301 in determining whether they have met the 500 employee requirement. In general, affiliation is determined with respect to whether an entity has the power to control another, based on 4 tests:

1. Affiliation based on ownership – an entity is deemed an affiliate of an individual, concern or entity that owns, or has the power to control, more than 50% of the entity's voting equity,
2. Affiliation attributable to stock options, convertible securities and agreements to merge (including agreements in principle) – the SBA considers these items to have a "present effect" on the power to control an entity,
3. Affiliation based on management – affiliation exists where a CEO, president, officer, managing member or partner who controls the management of both a loan applicant and another entity or entities, and
4. Affiliation based on identity of interest – affiliation exists when there is an identity of interest between close relatives with identical or substantially identical business or economic interests (for example, when close relatives are operating different entities that are in the same or a similar industry in the same geographic area).

The SBA can also determine affiliation exists based on the totality of an entity's circumstances. The affiliation rules are waived for:

- Businesses with an NAICS code of 72 (such as hotels and restaurants), that have no more than 500 employees per location,
- Businesses operating as a franchise that is assigned a franchise identifier code by the SBA, and
- Any business that receives financial assistance from a small business investment company licensed under section 301 of the Small Business Investment Act of 1958.

Amount of loan for first draw borrowers

First draw loans for **borrowers with employees** are calculated as 2.5 times average monthly payroll costs, up to $10 million.

- Average monthly payroll costs can be based on calendar 2019, calendar 2020 or the 12-month period prior to loan application.
  - Average monthly payroll is adjusted for items such as compensation paid to an

employee in excess of $100,000 on an annualized basis, compensation to non-US residents, and other adjustments.

- Payroll includes gross wages and tips (capped at $100,000 annualized) plus employer contributions to employee group health, life, disability, vision and dental insurance; retirement contributions; and state and local taxes assessed on employee compensation (i.e. SUTA).

- There are **limitations on owner-employee compensation** that vary by entity type (S corporation, partnership, etc.) See "How to calculate maximum loan amounts for first draw PPP loans and what documentation to provide – by business type" guidance issued by SBA.
- For seasonal employers the loan amount is based on 2.5 times the average monthly payroll costs for any 12-week period between Feb. 15, 2019 and Feb. 15, 2020.
  - A seasonal employer (1) operates for no more than seven months in a year, or (2) earned no more than 1/3 of its receipts in any six months in the prior calendar year.
- Entities that did not exist for the full one-year period before Feb. 15, 2020, should calculate the maximum loan amount based on 2.5 times payroll cost paid or incurred as of the date of the application divided by the number of months costs were paid or incurred.
- Businesses that are part of a single corporate group are limited to no more than $20,000,000 of first draw PPP loans.

  (1) Applies to entities that are majority owned, directly or indirectly, by a common parent

Self-employed borrowers who have no employees and file a Form 1040, Schedule C and are applying for a first draw will also be able to borrow 2.5 times their average monthly net profit based on line 31 of their 2019 or 2020 Schedule C. Net profit for this calculation is capped at $100,000.

Self-employed borrowers with employees and file a Form 1040, Schedule C will be able to borrow 2.5 times their average monthly payroll costs (as earlier defined), determined by dividing the sum of their 2019 or 2020 Schedule C line 31 amount (capped at $100,000) and payroll costs paid to their employees by 12.

A change enacted by the Act allows farmers and ranchers who file a Form 1040, Schedule F to use 2019 or 2020 gross income from line 9 rather than net income. Gross income for this calculation is capped at $100,000. Per the IFR referenced above, employee payroll costs are subtracted from the farmer's or rancher's gross income to avoid double-counting amounts that represent pay to the employees of the farmer or rancher.

First draw borrowers who received an Economic Injury Disaster Loan (EIDL) between January 31 and April 3, 2020 can refinance the outstanding amount into the PPP loan at the time of the PPP loan application, if they choose to do so.

- This does not include EIDL emergency advances, only the EIDL loan.

For entities that previously received a PPP loan (second draw)

The Act provides an opportunity for eligible hard-hit borrowers to receive a second PPP loan. The loans are available to entities with a 25% reduction in gross receipts and are for borrowers with fewer employees than first draw entities. Refer to Interim Final Rule on Second Draw Loans and Second Draw Paycheck Protection Program (PPP) Loans: How to Calculate Revenue Reduction and Maximum Loan Amounts Including What Documentation to Provide .

Eligibility

The following entities may be eligible if they were in operation on February 15, 2020 and received a first draw previously:

- 300 employees or less (Note: first draw loans are available for borrowers with 500 or fewer employees)
  - This is based on headcount and includes all full- or part-time employees.
  - Guidance has not been provided as to what timeframe is to be used in calculating the headcount.
- 25% reduction in gross revenue between comparable quarters in 2019 and 2020 (Note: this is not a requirement of first draw loans regardless of whether they are issued in 2020 or 2021). See further explanation below.
- At time of application, borrower has used or will use all first draw PPP funds (including the amount of any increase of a first draw) on eligible expenses on or before expected date of the second draw loan disbursement.

  The SBA will require lenders to delay funding the second draw until the borrower has fully used all of the first draw funds as the second draw application provides an assertion: "The Applicant received a First Draw Paycheck Protection Program Loan and, **before the Second Draw Paycheck Protection Program Loan is disbursed, will have used the full loan amount** (including any increase) of the First Draw Paycheck Protection Program Loan only for eligible expenses.

  Therefore, a second draw may be approved but for it to actually be received, the borrower will need to certify that the first draw funds have, in fact, been used in full on eligible expenses.

  It is **not a requirement that forgiveness** of the first draw loan has been applied for or been received. However, some lenders are requiring that the application for forgiveness for the first draw has been submitted.

  Frequently asked question: Can a borrower apply for a second draw immediately after applying for a first draw? This is not prohibited based on our understanding. However, as mentioned above the borrower is required to assert that the funds from the first draw have been fully utilized on eligible expenses before receiving second draw funds. It is also **not clear if a borrower must wait until the end of their first draw covered period (i.e. a minimum of 8 weeks which is the shortest covered period) to receive second draw funds.** Therefore, some lenders may choose to not allow a second draw application until the end of the first draw covered period. Additionally, some lenders are requiring borrowers to submit an application for forgiveness of the first draw before accepting a second draw application.
- For businesses with NAICS code 72 (such as hotels and restaurants), business must have 300 or less employees per physical location.
- The same affiliation rules apply as with the first draw (see discussion above). See Second Draw IFR for information on calculating gross receipts of affiliates and how to address situations in which an affiliate has been acquired during 2020.

Entities ineligible to receive a first draw are also ineligible to receive second draw. See list of ineligible entities above.

Amount of loan

Second draw loans for borrowers with employees are calculated as 2.5 times average monthly payroll costs, up to $2 million. Borrowers with a NAICS code that begins with 72 (such as hotels and restaurants) are eligible for loans up to 3.5 times average monthly payroll costs.

- Borrower can choose to calculate average monthly payroll based on 2019, 2020 or the 12-month period prior to when the loan is made.
  (1) Average monthly payroll is adjusted for items such as compensation paid to an employee in excess of $100,000 on an annualized basis, compensation to non-US residents, and other adjustments.
  (2) Payroll includes gross wages and tips (capped at $100,000 annualized) plus employer contributions to employee group health, life, disability, vision and dental insurance; retirement contributions; and state and local taxes assessed on employee compensation (i.e. SUTA).
- There are **limitations on owner-employee compensation** that vary by entity type (S corporation, partnership, etc.). See Second Draw Paycheck Protection Program (PPP) Loans: How to Calculate Revenue Reduction and Maximum Loan Amounts Including What Documentation to Provide guidance issued by the SBA.
- For **seasonal employers** the average monthly payroll costs are calculated based on any 12- week period between Feb. 15, 2019 and Feb. 15, 2020.
- For **entities that did not exist** for the full one-year period before Feb. 15, 2020, average monthly payroll costs are calculated as payroll cost paid or incurred as of the date of the application divided by the number of months costs were paid or incurred.

The following loan amount factors are specific to second draw loans and differ from a first draw loan:

- Borrowers cannot include a refinancing of an EIDL loan in a second draw.
- There is a limit of $4,000,000 in the aggregate for second draw PPP loans for businesses that are part of a single corporate group.
  - Applies to entities that are majority owned, directly or indirectly, by a common parent

Self-employed borrowers with no employees who file a Form 1040, Schedule C will also be able to borrow 2.5 times (or 3.5 times for NAICS codes beginning with 72) their average monthly net profit based on line 31 of their 2019 or 2020 Schedule C. Net profit for this calculation is capped at $100,000.

Self-employed borrowers with employees and file a Form 1040, Schedule C will be able to borrow 2.5 times their average monthly payroll costs (or 3.5 times for NAICS codes beginning with 72), determined by dividing the sum of their 2019 or 2020 Schedule C line 31 amount (capped at $100,000) and payroll costs paid to their employees by 12.

Farmers and ranchers who file a Form 1040 Schedule F can use 2019 or 2020 gross income from line 9 rather than net income. Gross income for this calculation is capped at $100,000. Per the Second Draw IFR, employee payroll costs are subtracted from the farmer's or rancher's gross income to avoid double-counting amounts that represent pay to the employees of the farmer or rancher.

Calculating decline in gross receipts

Use guidance available at: Second Draw Paycheck Protection Program (PPP) Loans: How to Calculate Revenue Reduction and Maximum Loan Amounts Including What

Documentation to Provide

- For borrowers in operation all four quarters of 2019, compare gross receipts during the first, second, third, or fourth quarter in 2020 to the same quarter in 2019 to determine if there was a 25% or greater revenue reduction.
  - For example, an applicant that had gross receipts of $50,000 in the second quarter of 2019 and had gross receipts of $30,000 in the second quarter of 2020 experienced a 40 percent revenue reduction between these two quarters.
- The SBA has stated that **only calendar quarters** are to be used for this calculation.
- Borrowers can choose to use annual 2020 gross receipts compared to 2019 to simplify the calculation. Annual tax forms will be required to substantiate the decline; if tax forms are not available, a copy of the applicant's quarterly income statements or bank statements must be provided.
  - Entities that use a fiscal year to file taxes may document a reduction in gross receipts with income tax returns only if their fiscal year contains all of the second, third, and fourth quarters of the calendar year (i.e., have a fiscal year start date of February 1, March 1, or April 1)
- For borrowers **not in operation all four quarters** or who **began operating in 2020** (prior to February 15, 2020), see the calculation periods later in this document.

What is included in gross receipts?

- Guidance issued in the Second Draw IFR defines gross receipts as all revenue in whatever form received or accrued (in accordance with the entity's accounting method) including:
  - Sales of products or services
  - Interest, dividends, royalties
  - Rents
  - Fees or commissions
  - Reduced by returns and allowances
- Gross receipts **do not include** the following: **net capital gains or losses**; taxes collected for and remitted to a taxing authority if included in gross or total income (such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees); proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker.
  - Forgiven first draw PPP loans and EIDL loans/advances are excluded from gross receipts. AICPA has asked for clarification as to whether other relief funds, such as Provider Relief Funds, Higher Education Emergency Relief Funds, state and local grants, etc. should be included.
- For an eligible **nonprofit organization**, a veterans organization, an eligible nonprofit news organization, eligible 501(c) organization, or eligible destination marketing organization, gross receipts has the meaning in section 6033 of the Internal Revenue Code of 1986.
  - For nonprofits this includes: contributions, gifts, grants, dues or assessments, sales or receipts from unrelated business activities, sale of assets, and investment income (e.g., interest, dividends, rents, and royalties).

    AICPA has asked for clarification on whether restricted donations are included.

- Gross receipts are not reduced for any associated costs or expenses.
- The calculation of gross receipts of affiliates is outlined in Second Draw IFR: Who is eligible for a Second Draw PPP Loan, and the SBA-issued guidance Second Draw PPP Loans – How to Calculate Revenue Reduction and Maximum Loan Amounts Including What Documentation to Provide.

What does "in accordance with the entity's accounting method" mean?

Use the standard accounting method of the borrower - cash, accrual, tax basis, etc. The key is to use the same method for the 2019 comparative period as you're using for 2020.

Note regarding accounting methods: We do not expect detailed guidance on accounting methods. Consider some core concepts:

- Does borrower have quarterly or monthly financial statements?
    - No need to be audited, reviewed, compiled.
    - No need to be GAAP-based – can be cash, tax or OCBOA.
- If not, use cash receipts from bank statements. Annotate, if it is not clear, which deposits listed on the bank statements constitute gross receipts (e.g., payments for purchases of goods and services) and which do not (e.g., capital infusions).
- Or borrower can use annual IRS income tax filings as discussed previously.

Documentation Requirements

For loans greater than $150,000, documentation of revenue reduction is necessary at the time of the loan. Documentation may include relevant tax forms, including annual tax forms, quarterly financial statements or bank statements.

For loans of $150,000 or less, documentation is not required with the loan application, but will be required with loan forgiveness application.

Other documentation requirements as to payroll costs will vary depending on whether the borrower is using the same payroll information as the first draw application and the same lender.

Also please see the above-referenced "Second draw Paycheck Protection Program (PPP) loans: how to calculate revenue reduction and maximum loan amounts including what documentation to provide" guidance issued by SBA.

Provision to modify the amount of a first draw

If a borrower received their first draw PPP loan prior to December 27, 2020, the loan amount for the first draw can be increased if changes in guidance result in an increased original loan amount. Note: this provision does not appear to be available to borrowers who made an error in calculating their original loan amount. Based on Procedural Notice 5000-20076, the SBA is limiting the scope to seasonal employers and farmers and ranchers may be eligible for an increased first draw loan. In addition, the following borrowers can reapply or request an increase in their first draw PPP loan amount if forgiveness has not been obtained:

a. 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.

b. 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.

c. 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.

See the Interim Final Rule on Paycheck Protection Program as Amended by Economic Aid Act for additional details.

The SBA issued Procedural Notice 5000-20076 on January 13, 2021; however, many lenders are not prioritizing first draw loan increases, focusing instead on new first draw and second draw loan applications.

Excess loan amount errors

See guidance at: Procedural Notice - Paycheck Protection Program Excess Loan Amount Errors

A borrower may not receive loan forgiveness for any amount that exceeds the correct maximum loan amount permitted by statute for that borrower. This is true whether the excess loan amount was caused by borrower error or lender error. The borrower is required to begin making payments on the remaining loan amount.

This pertains to an error made in good faith that caused a borrower to receive a PPP loan amount that exceeds the borrower's correct maximum loan amount under the CARES Act and the Economic Aid Act.1 An excess loan amount error does not include a knowing misstatement. Knowing misstatements may result in additional action, such as charges for fraud.

Economic necessity certification and questionnaires

Entities applying for a first or second draw are required to certify that "Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."

The SBA and Treasury provided a safe harbor in Treasury FAQ #46 published May 13, 2020 providing that any PPP borrower, together with its affiliates, that received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

In late October, the SBA created the following "Loan Necessity Questionnaires" for lenders to issue to clients who together with their affiliates borrowed first-draw loans of $2 million or more:

Form 3509 (For-Profit Borrowers)

Form 3510 (Non-Profit Borrowers)

The questionnaires are designed to assist the SBA with gathering information used to evaluate the certifications referenced above. The instructions provide that the questionnaires should not be viewed as a challenge by the SBA to the borrower's certification, and that the responses will only be used to assist the SBA in determining whether additional information is needed. The SBA will consider the totality of the borrower's facts and circumstances when assessing the validity of the certification.

Inquiries include, but are not limited to:

- The borrower's 2020 second quarter revenue relative to previous quarters
- Whether the borrower's operations were shut down or significantly altered due to a COVID-19-related government order
- The borrower's cash and cash equivalents position on the last day of the calendar quarter that immediately preceded the date of their loan application
- Whether the borrower began any new capital improvement projects that were not related to COVID-19 between March 13, 2020 and the end of the covered period
- Whether the borrower made any dividend or other capital payments to its owners, other than tax distributions
- Whether the borrower compensated any of its employees in an amount that exceeds $250,000 on an annualized basis during the covered period

Borrowers must respond and return the questionnaires to their lenders within 10 days of receipt. Failure to do so could result in the SBA concluding that the borrower was ineligible for the loan, the loan amount or any forgiveness claimed.

Forgiveness of a first or second draw PPP loan

Borrowers can qualify for forgiveness of PPP loans up to the full principal amount of the loan and accrued interest if

- The loan proceeds are used for forgivable purposes during the borrower's covered period
- And employee and compensation levels are maintained or, if not, an applicable safe harbor or exemption applies.
- Additionally, at least 60 percent of the PPP loan proceeds are required to be used for payroll costs to achieve full forgiveness of the loan.

These provisions apply to first and second draw loans. The SBA has resources available on their PPP Forgiveness page, including forgiveness application forms.

Costs eligible for forgiveness include:

- Payroll costs (or owner income replacement for self-employed borrowers)
  - Payroll costs used in determining the Employer Retention Credit are not eligible for loan forgiveness
  - The Act expands allowable payroll costs to include group insurance payments for vision, dental, disability and life insurance.
- Mortgage interest incurred before February 15, 2020
  - Mortgage interest paid to related parties is not eligible for forgiveness.
- Rent on leases dated before February 15, 2020
  - Rent to related parties is subject to limitations based on the amount of mortgage interest the related party pays during the covered period.

- Utilities for service that began before February 15, 2020
- Covered operations expenditures*
- Covered property damage costs*
- Covered supplier costs*
- Covered worker protection expenditures*

* The Act added these additional costs that are eligible for forgiveness. Explanations of these costs are provided at the end of this document.

The additional categories of eligible expenses can be used in determining the amount of costs for any PPP loans (whether first draw or second draw) if the loan hasn't already been forgiven.

Generally, a reduction in the number of employees or the rate of pay affects the forgiveness of the loan.

- If a borrower decreases salaries and wages by more than 25% for any employee who made less than $100,000 annualized in 2019, loan forgiveness will be reduced.
- If the number of FTEs decreases, loan forgiveness will be reduced.
- Safe harbors and exceptions are available in some circumstances.

There are detailed provisions regarding these forgiveness reduction items that are reviewed in other resources available at www.aicpa.org/sba.

Examples of the Impact of FTE Reductions on Forgiveness

Generally, if a borrower reduces their FTEs during the covered period, their loan forgiveness amount will be reduced by the same percentage by which they reduced their FTEs. This determination is made by comparing the borrower's average FTEs during the covered period to their average FTEs during a "reference period" of their choosing:

1. Feb. 15, 2019 through June 30, 2019,
2. Jan. 1, 2020 through Feb. 29, 2020, or
3. ***In the case of a seasonal employer***, either #1 or 2 above, or a consecutive 12-week period between Feb. 15, 2019 and Feb. 15, 2020.

Based on current guidance, the options for choices of reference periods are the same for both first and second draw loans. As such, FTE reductions that took place before a borrower took a 2021 first or second draw loan could correspondingly reduce their forgiveness amount.

Safe Harbor Period for first and second draw loans - If a borrower's FTEs were reduced between Feb. 15, 2020 and April 26, 2020 ("the safe harbor period") and restores their FTEs to the level maintained during the pay period that included Feb. 15, 2020 by Dec. 31, 2020 (or in the case of a loan made on or after Dec. 27, 2020, by the end of the covered period), the borrower does not need to reduce their forgiveness amount. Additional safe harbors are available for borrowers who can document either good faith written offers to employees to eliminate the reductions or an inability to return to pre-COVID-19 business levels.

See the Jan. 19, 2021 IFR on Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid for additional details.

FTE reduction examples

A. 2020 first draw FTE reduction example

A non-seasonal employer received a first draw loan on April 15, 2020 of $1 million. During their 8-week covered period ending June 10, 2020, they used the entire $1 million loan for eligible payroll and non-payroll costs paid, but also reduced their FTE count, and did not restore it prior to Dec. 31, 2020. During the covered period, they averaged 10 FTEs. From

Feb. 15, 2019 through June 30, 2019 they averaged 20 FTEs; from Jan. 1, 2020 through Feb. 29, 2020, they averaged 15 FTEs. Choosing the Jan. 1, 2020 through Feb. 29, 2020 reference period would be advantageous as it would result in a lower reduction percentage (33% reduction from 15 to 10 FTEs, vs. a 50% reduction from 20 to 10 FTEs). The maximum amount of forgiveness this borrower is eligible for after taking the FTE reduction into account is $666,667 ($1 million loan less $333,333 FTE reduction).

B. 2021 first draw FTE reduction example

A non-seasonal employer received a first draw loan on Jan. 15, 2021 of $1 million. They chose an 8-week covered period ending on March 12, 2021, during which they used the entire $1 million loan for eligible payroll and non-payroll costs paid. From Feb. 15, 2019 through June 30, 2019 they averaged 20 FTEs; from Jan. 1, 2020 through Feb. 29, 2020, they averaged 21 FTEs. Between Feb. 15, 2020 and April 26, 2020, they averaged 15 FTEs. Their 15 FTE average was maintained through January and February of 2021, but on March 10, 2021, they restored their FTE count to 21. Since the borrower's FTE reduction occurred during the Feb. 15, 2020 through April 26, 2020 period, ***and*** prior to their covered period ending, the borrower restored their FTE count to the level maintained during their pay period that included Feb. 15, 2020, the FTE reduction safe harbor is met and they are not required to reduce their forgiveness.

C. 2021 second draw FTE reduction example

The same non-seasonal employer from the 2020 first draw FTE reduction example A. received a second draw loan on Jan. 15, 2021 of $1 million. They chose an 8-week covered period ending on March 12, 2021, during which they used the entire $1 million loan for eligible payroll and non-payroll costs paid. Following the end of their first draw covered period, they further reduced their FTE count to 5, but maintained that average through the end of 2020. There were no changes to their FTE count during their second draw covered period. Again, from Feb. 15, 2019 through June 30, 2019 they averaged 20 FTEs; from Jan. 1, 2020 through Feb. 29, 2020, they averaged 15 FTEs – and recall, these remain their only choices for their reference period. Choosing the Jan. 1, 2020 through Feb. 29, 2020 reference period would be advantageous as it would result in a lower reduction percentage (67% reduction from 15 to 5 FTEs, vs. a 75% reduction from 20 to 5 FTEs). ***Despite not reducing its FTE count since the enactment of the Economic Aid Act, the maximum amount of forgiveness this borrower is eligible for after taking the FTE reduction into account is $333,333 ($1 million loan less $666,667 FTE reduction).***

How and when to apply for forgiveness

A borrower can apply for forgiveness once they've used all the loan proceeds for which they are requesting forgiveness. Borrowers can apply for forgiveness any time up to the maturity date of the loan. If borrowers do not apply for forgiveness within 10 months after the last day of the covered period, then loan payments are no longer deferred, and borrowers will be required to begin making loan payments to their lender.

Borrowers of second draw loans exceeding $150,000 must submit their first draw forgiveness application (even if no amount of forgiveness is requested) either before or simultaneously with the second draw forgiveness application. Applications must be made on separate forms.

Covered period for first and second draw loans

The Act allows borrowers to select their loan forgiveness covered period. The covered period begins on the date the loan proceeds are disbursed and ends on any date the borrower chooses that is between 8 weeks and 24 weeks after the covered period begins.

Because of this flexibility in the covered period, the alternative payroll covered period established for prior first draw loans is no longer needed.

Prorating of $100,000 limit on compensation

The Act specifies that the $100,000 compensation limit for owners and employees is to be prorated based on the length during which the compensation is paid or incurred. For example, if a covered period of 12 weeks is chosen by the borrower, the maximum amount of employee compensation eligible for forgiveness is calculated as $100,000 divided by 52 weeks multiplied by 12 weeks ($23,077).

Note: Owner compensation eligible for forgiveness is limited to 2.5 months of an owner's 2019 or 2020 compensation (up to a maximum of $20,833 per individual in total across all businesses). The Interim Final Rule on Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act similarly provides that the compensation limit must be prorated based on the length during which the compensation is paid or incurred. For example, if a covered period of 10 weeks is chosen by the borrower, the maximum amount of owner compensation eligible for forgiveness is calculated as $100,000 divided by 52 weeks multiplied by 10 weeks ($19,231). The aforementioned $20,833 limit applies in covered periods exceeding 2.5 months. See AICPA FAQs for definition of an owner for PPP purposes.

Simplified forgiveness for loans of $150,000 and less for first draw and second draw loans

The Act provides a simpler forgiveness application process for loans of $150,000 or less. Previously SBA had provided Form 3508S to streamline the forgiveness of loans of $50,000 or less but the form can now be used for loans of $150,000 or less.

See guidance at the Interim Final Rule on Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act, the following is required of the borrower:

- Sign and submit a one-page form
- Attest to complying with PPP requirements
- Report loan amount
- Report number of employees retained
- Report estimate of loan amount spent on payroll
- Retain records
  - 4 years for employment
  - 3 years for other
- Will be required to provide documentation to substantiate loss of revenue when apply for forgiveness of a second draw loan
- Borrowers with **loans of $50,000 or less** for an individual first draw or second draw loan **are exempt from reductions in forgiveness due to reductions in either full-time equivalent employees or employee salary and wages.**
  - Does not apply to borrowers of $50,000 or less that together with their affiliates received First Draw or Second Draw loans totaling $2 million.
- Borrowers with loans of more than $50,000 and Borrowers of $50,000 or less that

together with their affiliates received First Draw or Second Draw loans totaling $2 million or more are subject to reductions in forgiveness due to reductions in either full-time equivalent employees or employee salary and wages.

- If FTE or salary reductions are applicable, the Borrower must follow SBA Form 3508 and its instructions to calculate its requested loan forgiveness amount. Borrower can still file using Form3508S, but must follow SBA Form 3508 and its instructions.

As with any PPP loan, the **SBA may review and audit PPP loans** of $150,000 or less and access any records the borrower is required to retain.

Forgiveness applications for borrowers of loans greater than $150,000

The above-referenced revised Form 3508S and two additional revised loan forgiveness applications were released on January 19, 2021:

Form 3508EZ – for use by borrowers who did not reduce the annual salary or hourly wages of any employee (whose annualized salary was $100,000 or less) by more than 25% during the covered period, compared to the most recent full quarter preceding the covered period, ***and***:

1. Did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the covered period, ***or***
2. Was unable to operate during the covered period at the same level of business activity as prior to February 15, 2020 due to compliance with government health and safety requirements or guidance issued during specified timeframes.

Form 3508 – for use by all borrowers ineligible to use Forms 3508S and 3508EZ.

Impact of EIDL advances on PPP forgiveness

In welcome news for borrowers who also received an EIDL advance, the Act eliminates the requirement that EIDL advances be subtracted from PPP loan forgiveness. The SBA has indicated that any EIDL advance amounts previously deducted from a borrower's forgiveness will be remitted to the lender, along with interest.

Note: under Sec. 278 (b) of the Economic Aid Act, EIDL advances are not taxable for federal income tax purposes and expenses paid with the advance are deductible (if otherwise deductible).

Tax deductibility of PPP expenses

The Act also provides welcome news for borrowers by stating that for federal income tax purposes, expenses paid with a PPP loan are deductible if otherwise eligible. The forgiveness of the PPP loan is not taxable either.

The IRS issued Revenue Ruling 2021-02 on January 6, 2021 acknowledging the Act.

An AICPA Journal of Accountancy article discusses PPP basis issues as a result of this treatment.

Ability of PPP borrowers to use Employee Retention Credits

The Act provides additional relief to entities by allowing the use of both PPP loans and Employee Retention Credits (ERC). ERC allows eligible entities to receive a refundable payroll tax credit on qualified wages. This provision is retroactive to 2020. However, a borrower cannot use the same wages for PPP forgiveness and ERC.

Many borrowers may be able to qualify for full forgiveness of their PPP loan using only payroll costs. However, because the Act makes ERC available to PPP borrowers, utilizing non-payroll costs for forgiveness (subject to the 60-40 payroll requirement), as well as payments for the various non-health insurance types that are now eligible payroll costs (and not qualified wages for the ERC) may provide access to ERC. Careful modeling and planning will be essential to assisting clients who are eligible for both PPP loans and the ERC with maximizing the benefits of each. A discussion of ERC is outside the scope of this resource and guidance from the IRS is needed.

The AICPA is working hard to get the answers needed to advise clients on if and how they can take advantage of the credit, how PPP loan borrowers may be able to retroactively take the credit in 2020 or if they are looking for how to apply the new 2021 credit rules.

In the meantime, the following may be helpful:

- Check the IRS FAQs for information on how to calculate and claim the credit in 2020.
- Please join the AICPA webcast The NEW Employee Retention Credit: More for Eligible Employers which will include discussion of both the 2020 credit and 2021 credit rules.

Calculating decline in revenue for second draw borrowers not in operation all of 2019 or began operations in 2020

Per Second Draw IFR: Who is eligible for a Second Draw PPP Loan? PPP loan recipients seeking a Second Draw must demonstrate at least a 25% reduction in gross receipts, measured as follows:

- Applicants in operation in Q1, Q2, Q3, and Q4 2019 may select any quarter and compare with the same quarter in 2020.
- For applicants not in operation in Q1 or Q2 2019, select either Q3 or Q4 2019 and compare with the same quarter in 2020.
- For applicants not in operation in Q1, Q2 or Q3 2019, select Q4 2019 and compare with Q1, Q2, Q3, or Q4 2020.
- For applicants not in operation in 2019 but in operation as of Feb. 15, 2020, select Q1 2020 and compare with Q2, Q3, or Q4 2020.
  – Note: entities must have been in operation on or before February 15, 2020 to be eligible for PPP loans.
- Applicants in operation in all four quarters of 2019 may compare with all four quarters of 2020

Descriptions of new categories of eligible costs for PPP forgiveness

As noted previously, the Act added additional costs that are eligible for forgiveness. The Act and supporting SBA guidance define these costs as:

Covered operations expenditures: payments for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses.

Covered property damage costs: costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation.

Covered supplier costs: expenditures made by a borrower to a supplier of goods for the supply of goods that

A) are essential to the operations of the borrower at the time at which the expenditure is made; and

(B) is made pursuant to a contract, order, or purchase order—

(i) in effect at any time before the covered period with respect to the applicable covered loan; or

(ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan.

Covered worker protection expenditures: operating or a capital expenditures to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning on March 1, 2020 and ending the date on which the national emergency with respect to the COVID–19 expires related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19.

Such expenditures may include—

(i) the purchase, maintenance, or renovation of assets that create or expand—(I) a drive- through window facility; (II) an indoor, outdoor, or combined air or air pressure ventilation or filtration system; (III) a physical barrier such as a sneeze guard; (IV) an expansion of additional indoor, outdoor, or combined business space; (V) an onsite or offsite health screening capability; or (VI) other assets relating to the compliance with the requirements or guidance described in subparagraph (A), as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and (ii) the purchase of—(I) covered materials described in section 328.103(a) of title 44, Code of Federal Regulations, or any successor regulation; (II) particulate filtering facepiece respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use authorization; or (III) other kinds of personal protective equipment, as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and

Such expenditures do not include residential real property or intangible property.

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