

An Update on the Paycheck Protection Program – Round 2 (PPP2) and Related Issues

Congressman Ed Perlmutter
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If an eligible business did not receive a PPP loan in the first round, can it apply for a PPP loan now?

The Consolidated Appropriations Act, 2021, reopened the original PPP loan program (which previously expired on August 8, 2020) until March 31, 2021. Eligible businesses, non-profits, sole proprietors, independent contractors and self-employed individuals that did not previously receive a PPP loan may apply for a PPP loan until March 31, 2021.



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Who is eligible for a PPP Second Draw Loan?

The Consolidated Appropriations Act, 2021, created the PPP Second Draw Loan Program for, generally, any business, 501(c)(3) nonprofit organization, 501(c)(19) veterans organization, Tribal business, eligible self-employed individual, sole proprietor, independent contractor, or small agricultural cooperative that:

- employs not more than 300 employees (per location for businesses with an NAICS code beginning with 72 and eligible news organizations with more than one physical location);
- has expended the full amount of its first PPP loan; and
- can demonstrate at least a 25% reduction in gross receipts in the 1st, 2nd, 3rd, or 4th quarter of 2020 as compared to the same quarter in 2019.



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Who is eligible for a PPP Second Draw Loan?

An applicant is not eligible for a Second Draw Loan, even if it meets the eligibility requirements, above, if the applicant is: (1) **not eligible for a first draw PPP loan;** (2) a business concern or entity primarily engaged in political activities or lobbying activities; (3) business concerns or entities with certain connections with or operations in the People's Republic of China or the Special Administrative Region of Hong Kong, as are business concerns and entities that have a resident of China as a board member; (4) any person that is required to register under the Foreign Agents Registration Act of 1938; (5) any person or entity that receives a grant for shuttered venue operators; (6) any entity in which the President, the Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person as determined under applicable common law, directly or indirectly holds a controlling interest in the entity; (7) **any issuer of securities listed on an exchange registered as a national securities exchange;** (8) any entity that has previously received a Second Draw PPP Loan; or (9) **an entity that has permanently closed.**



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Applying for PPP Loan Forgiveness

Each PPP loan must use a separate loan forgiveness application form. You cannot use one form to apply for forgiveness of both a First and Second Draw PPP loan. Borrowers must submit a loan forgiveness application for their First Draw PPP Loan before or simultaneously with the loan forgiveness application for their Second Draw PPP Loan, even if the calculated amount of forgiveness on their First Draw PPP Loan is zero.

- **Revised Form 3508S** (as of 1/19/2021) implements the requirement of the Economic Aid Act that SBA adopt a one-page application form with simplified documentation requirements for borrowers with loans of \$150,000 or less. Form 3508S requires fewer calculations and less documentation for eligible borrowers.
- **Revised Form 3508** (as of 1/19/2021) is the general form to be used by borrowers that do not qualify for Form 3508EZ or 3508S. It is very similar to previous Form 3508, with minor changes to implement the Economic Aid Act, such as adding the four new categories of eligible costs. Borrowers must submit payroll and nonpayroll documentation as described in the instructions.
- **Revised form 3508EZ** (AS OF 1/19/2021) is available to borrowers that did not reduce salary or wages of any employee by more than 25 percent and did not reduce the number of employees or average paid hours. It is also available to borrowers that did not reduce salary or wages of any employee by more than 25 percent and were unable to operate at the same level of business capacity because of COVID-related restrictions.



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PPP2

1. No personal guarantees required
2. 1% interest rate
3. 5-year maturity
4. Eligible for 100% forgiveness
5. Covered period can be 8-24 weeks, not 8 OR 24 weeks
6. Applies to businesses of 300 or fewer employees
7. Applies to businesses or self-employed individuals that experienced a 25% revenue reduction in 2020 relative to 2019 (can be determined on a quarter-to-quarter basis or annually – for example Quarter 4 2020 30% reduction in revenue compared to Quarter 4 2019).
8. Any forgiveness amount of a 1st Draw PPP Loan that a Borrower received in 2020 is excluded from a borrower's gross receipts.
9. 2nd Draw PPP loan eligible only to a borrower that (a) received a 1st Draw PPP Loan, and (b) has used or will use the full amount of the 1st Draw PPP loan on or before the expected date the 2nd draw PPP loan will be disbursed.
10. Borrowers must have spent the 1st Draw on eligible expenses under the PPP rules.
11. The calculation employs 2.5x average monthly payroll (except that companies with a NAICS code beginning with "72" (Accommodation and Food Services: including most restaurants, hotels/motels, bars, caterers, etc.) can use 3.5x average monthly payroll
12. The maximum loan amount of \$2 million
13. The average monthly payroll can be based on calendar year 2019 or 2020.



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How does the PPP loan work with the temporary Emergency Economic Injury Grants awarded under the EIDL Program?

EIDL Grant and EIDL loan recipients may apply for and take out a PPP loan as long as there is no duplication in the uses of funds. Per the Consolidated Appropriations Act, 2021, the proceeds from an EIDL Grant will not be deducted from the loan forgiveness amount on the PPP loan. For those PPP borrowers that already received PPP loan forgiveness – and had their amount of forgiveness reduced by the amount of their EIDL grant (up to \$10,000) – the SBA issued an Interim Final Rule on January 8, 2021 stating that it will identify forgiveness payments that were reduced by EIDL Advances and automatically remit a reconciliation payment to the ACH account identified by the PPP lender.



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What is included in “payroll costs” eligible for loan forgiveness?

“Payroll costs” eligible for loan forgiveness include compensation up to \$100,000 (applies only to cash compensation, and not to non-cash benefits) on an annualized basis to employees with a principal place of residence in the U.S. in the form of:

- gross salary, gross wages, gross commission, or similar compensation (including bonuses and hazard pay);
- gross cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips);
- payment for vacation, parental, family, medical or sick leave;
- allowance for dismissal or separation;
- payment for the provision of employee or group life, disability, vision, or dental insurance benefits, including insurance premiums and retirement (does not include benefits accelerated from periods outside of the Covered Period); and
- payment of state and local taxes assessed on the compensation of employees.



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What is not included in “payroll costs”?

“Payroll costs” may not include:

- cash compensation of an individual employee in excess of an annual salary of \$100,000 in one year, pro-rated during the Covered Period (i.e., for a 24-week covered period, a maximum of \$46,154 per individual, or for an 8-week covered period, a maximum of \$15,385 per individual);
- any compensation of an employee whose principal place of residence is outside of the United States;
- qualified sick leave wages or family leave wages for which a credit is allowed under sections 7001 or 7003 of the Families First Coronavirus Response Act; or
- amounts paid to independent contractors.



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May a PPP borrower deduct, for Federal income tax purposes, those expenses incurred in its business for which the borrower received a covered PPP loan and for which expenses the borrower received forgiveness of such covered loan?

Yes. The Consolidated Appropriations Act, 2021, clarifies that gross income does not include any amount that would otherwise arise from the forgiveness of a PPP loan. It also clarifies that deductions are allowed for otherwise deductible expenses paid with the proceeds of a PPP loan that is forgiven, and that the tax basis and other attributes of the borrower’s assets will not be reduced as a result of the loan forgiveness.



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If a business receives an EIDL and/or an EIDL Grant, can it also get a PPP loan?

- Yes. Whether the business has already received an EIDL unrelated to Coronavirus or a Coronavirus-related EIDL and/or an EIDL Grant, it may also apply for a PPP loan.
- Also, a business cannot use the EIDL *for the same purpose* as its PPP loan. For example, if the business used the EIDL to cover payroll for certain workers in April, it cannot use a PPP loan for payroll for those same workers in April, although it could use it for payroll in March or for different workers in April.

