



PAYCHECK PROTECTION PROGRAM 2.0

Practical Guidance for Self-Employed, Nonprofit, and Microbusiness Borrowers

February 26, 2021

Presented by Volunteer Lawyers for the Arts and Lowenstein Sandler LLP



VOLUNTEER LAWYERS FOR THE ARTS

VLANY.ORG | Twitter: @VLANY | Facebook.com/VLANY.org | Instagram: @VLA_NEWYORK

Important Note

Information contained in this presentation may change as a result of new legislative and administrative responses to the COVID-19 crisis.

Applicants for federal stimulus relief should be prepared for some level of delay and uncertainty when applying for relief programs. Applicants should ensure that they have reviewed the latest updates and current application materials when applying for programs.

This resource was prepared by Lowenstein Sandler LLP and Volunteer Lawyers for the Arts for informational purposes only. It is current as of February 26, 2021. It is not intended to give, and should not be relied upon for, legal or professional advice in any particular circumstance or fact situation. We recommend that you consult professional advisors for guidance on your individual circumstances. This information should not be construed as an endorsement of any specific financial program, bank or lender.

Road Map

- Paycheck Protection Program 2.0
- SBA Regulatory Oversight
- Questions and Answers

Paycheck Protection Program Overview

- The PPP was established under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) to provide federal loans to small business (including sole proprietors, independent contractors, and self-employed individuals such as single-member LLCs) and certain nonprofits to help cover payroll/compensation and other eligible expenses.
- Borrowers may be eligible for loan forgiveness if they use the majority of the loan on payroll/self-compensation and other qualified expenses. In other words, the loan does not need to be repaid under certain circumstances.
- Loans (or portions thereof) not forgiven must be repaid over 5 years (or 2 years if disbursed before June 5, 2020).

Paycheck Protection Program Overview

- The CARES Act authorized \$349 billion of funding. The first wave of PPP funding was exhausted on April 16, 2020.
- The government approved \$310 billion of new funding for the PPP on April 24, 2020 and resumed accepting applications again on April 27, 2020.
- The PPP closed on August 8, 2020 when funding was exhausted.
- On December 27, 2020 a \$900 billion COVID-19 relief package known as the “Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act” (“Economic Aid Act”) was passed. This law authorized \$284.5 billion in new PPP funding and reopened the program for First and Second Draw PPP Loans through March 31, 2021. We call this PPP Round 2 or PPP 2.0.
- PPP 2.0 includes modifications that are generally favorable for borrowers (e.g. Second Draw loans allowed; expanded list of eligible expenses; simplified loan forgiveness for loans up to \$150,000; and set-asides for first-time borrowers, microbusinesses (10 or fewer employees), businesses operating in low- and moderate-income areas; and loans made by community financial institutions).

Paycheck Protection Program Overview

- During the roll out of the PPP, the SBA and Treasury Department issued dozens of Interim Final Rules, guidance documents, FAQs, and model applications. Many borrowers were hesitant to participate due to confusion.
- The PPP rules and requirements are clearer now than when the program began.
- **Key update:** On February 22, 2021, the Biden-Harris Administration announced changes to the PPP that will benefit microbusinesses and businesses without employees.
 - From February 24 to March 10, lenders may accept applications only from businesses with fewer than 20 employees.
 - The SBA will revise the PPP funding formula to allow sole proprietors, independent contractors, and self-employed individuals (70% of whom are women and/or people of color) to receive more money. Guidance/rules are expected next week.
- You should consider applying for a PPP by March 31, 2021 if you think you may be eligible.

First Draw Loans

Am I eligible?

Borrower Type	<ul style="list-style-type: none">• An independent contractor, sole proprietor, or self-employed individual who files a Form 1040, Schedule C• A small business or 501(c)(3) nonprofit with no more than 500 employees (full time and part time)• Certain other entity types (e.g. 501(c)(9) veterans organizations, 501(c)(6) chambers of commerce, news organizations)
Active / Profitable	<ul style="list-style-type: none">• Business was in operation on or before February 15, 2020• Current rule: for self-employed borrowers, must show a net profit on your 2019 or 2020 IRS Form 1040, Schedule C, line 31. (SBA expected to change this rule next week.)
Need	<ul style="list-style-type: none">• Current economic uncertainty makes the loan request necessary to support your ongoing operations
Exceptions to Eligibility	<ul style="list-style-type: none">• 20% or more of the business owners are currently incarcerated or have been convicted of a felony involving fraud in the last 5 years• Business defaulted on prior SBA loan in the prior 7 years• Business applied for or received a Shuttered Venue Operators Grant

First Draw Loans

What is the maximum amount I can borrow?

- The lesser of \$10 million or 2.5 times your eligible monthly payroll expenses (including any owner compensation)
- Payroll is capped at \$100,000 per employee on an annualized basis
- Payroll reference period is 2019 or 2020 (or for borrowers that are not independent contractors, sole proprietors, or self-employed individuals, the 1-year period before the loan is made). Special rules exist for seasonal and start-up businesses that did not exist in the one year period before 2/15/20. Choose the timeframe that reflects the largest payroll costs if you want to maximize your loan.
- Self-employed individuals with no employees: Originally, 2.5 months of net profit as reported on either the 2019 or 2020 Form 1040, Schedule C, line 31. The SBA is in the process of modifying this calculation (because it resulted in very small loans).
- The SBA has published guidance on calculating maximum First Draw PPP Loan by entity type.
 - [How to calculate maximum loan amount for First Draw Loans and what documentation to provide](#)

First Draw Loans

I received a PPP loan last year. Can I now increase my first draw amount?

Only under certain circumstances:

- You have a partnership that received a PPP loan that included payroll costs of partnership employees but did not include any amount for owner compensation. You may reapply to include owner compensation for the partner(s).
- You received then returned all of the prior PPP loan. You may reapply for the amount you are eligible for under the current rules.
- You returned part of a PPP loan or did not accept the full amount. You can reapply to get the difference between the amount you accepted and the amount you qualify for under the current rules.

Second Draw Loans

Am I eligible?

You are generally eligible for a Second Draw PPP Loan if you:

- previously received a First Draw PPP Loan and will or have used the full amount only for authorized uses on or before the date you receive the second draw loan;
- have no more than 300 employees; and
- can demonstrate at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.
 - Special rules apply for businesses that were in operation for only part of 2019.
 - The SBA has published detailed guidance on calculating “gross receipts”.
- Gross receipts include all revenue from sales, rents, royalties, interest, dividends or other sources, but do not include the forgiven amount of a First Draw PPP Loan or any EIDL Advance.
- Exception: You cannot receive both a Shuttered Venue Operators Grant and Second Draw PPP Loan

Second Draw Loans

What is the maximum amount I can borrow?

- The lesser of \$2 million or 2.5 times your eligible monthly payroll expenses (including any owner compensation).
- Calculation methodologies are otherwise the same as for First Draw PPP Loans.
- The SBA has published guidance on calculating maximum Second Draw PPP Loans by entity type.
 - [How to calculate maximum loan amount for Second Draw Loans and what documentation to provide](#)

Application Logistics

- Calculate your maximum loan amount.
- Identify a participating lender
 - You should contact your existing lender or lending institution where you maintain your bank accounts. Many participating lenders are accepting applications only from existing customers. Lenders accept PPP applications through their own online portals. Unlike applying for an EIDL, you cannot apply for a PPP loan directly with the SBA.
 - If your existing bank is not participating in the program or is not accepting PPP Round 2 applications, you may wish to apply with a community financial institution or FinTech company (e.g. [Northeast Bank](#), [Old Dominion Bank](#), [PayPal](#)).
 - This [SBA search tool](#) will identify lenders near you.
- Complete the application form and submit lender-required documentation.
 - The SBA has released model [first draw](#) and [second draw](#) PPP loan applications (which individual lenders may modify).
 - Required documentation may include payroll and/or tax reports for the applicable reference period (2019, 2020 or for borrowers other than individuals the prior 12-month period), documentation that the business was in operation on February 15, 2020.
 - For Second Draw PPP Loans, documentation of 25% revenue drop in any quarter of 2020 as compared to 2019, unless the applicant is requesting a loan of \$150,000 or less (in which case such documentation must be provided later, when the borrower applies for forgiveness).

Application Logistics

First Draw Application Form

- The SBA modified the [PPP First Draw application form](#) on February 17, 2021.
- Requires certain borrower information:
 - *E.g.*, average monthly payroll, number of employees, purpose of the loan, business owners (if applicable), demographic information (optional).
- Requires certain certifications, for example:
 - You are eligible to receive a PPP loan.
 - You were in operation on February 15, 2020 and have not permanently closed.
 - Current economic uncertainty makes the loan request necessary to support ongoing operations.
 - Funds will be used exclusively to retain workers and maintain payroll and for other expenses allowed under the PPP rules.
 - You have not and will not receive a Shuttered Venue Operators Grant from the SBA.

Application Logistics

Second Draw Application Form

- The SBA modified the [PPP Second Draw application form](#) on February 17, 2021.
- Additional information required
 - Information about your First Draw PPP Loan.
 - Documentation of revenue reduction.

Eligible Uses of PPP Funds

The Economic Aid Act expanded what PPP loan proceeds can be used for:

- Payroll costs (including salary, wages, commissions, bonuses, hazard pay, employer contributions to employee benefit plans, and employer portion of state and local taxes assessed on wages);
- Interest payments on business mortgage obligations for real or personal property; mortgage must be in place before 2/15/20; cannot pay principal or prepay mortgage;
- Rent under a lease agreement for real or personal property; lease must be in place before 2/15/20;
- Utilities (including electricity, water, gas, sewage, telephone, cell phone, Internet, and transportation costs); service must have begun before 2/15/20;
- Operating expenses, including 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;
- Costs related to property damage and vandalism or looting resulting from public disturbances that occurred in 2020 and that were not covered by insurance or other compensation;
- Worker protection expenses including any operating or capital expenditures to adapt business activities to comply with government-issued COVID-19 safety guidelines (e.g., air pressure ventilation or filtration systems, physical barriers to ensure social distancing, a drive-through window, an expansion of indoor or outdoor business space, onsite or offsite health-screening, or the purchase of personal protective equipment);
- The costs of supplies that are essential to your operations at the time of purchase, made pursuant to a contract in effect prior to your covered loan period, or with respect to perishable goods, in effect before or at any time during your covered loan period.

Time-Frame For Using PPP Loan Funds

- PPP proceeds must be spent on eligible payroll and non-payroll costs that are paid or incurred during the borrower's covered period.
- Spend PPP loan funds that you want to be forgiven during the loan's "covered period":
 - begins on the date its PPP loan is disbursed (*i.e.*, deposited into your bank account);
 - ends on any date you select that occur between 8 and 24 weeks after the disbursement date.
- Spend at least 60% of the PPP loan during this time on eligible payroll costs to receive full loan forgiveness.

Loan Forgiveness

How much of my loan will be forgiven?

- The loan amounts will be **fully forgiven** so long as:
 - the loan is used to cover payroll costs and other eligible expenses over the 8- to 24-week period after the loan is made;
 - at least **60%** of the loan is used for payroll costs, with no more than **40%** of loan used for eligible non-payroll expenses; and
 - for loans greater than \$50,000, employee and compensation levels are maintained.
- For loans greater than \$50,000, forgiveness is **reduced** based on workforce reductions and wage reductions (with certain exceptions discussed below).
- PPP loans of \$50,000 are **exempt** from loan forgiveness reductions based on workforce and wage reductions.

Loan Forgiveness

What types of workforce and wage reductions will not reduce my loan forgiveness?

- You lay off workers between February 15, 2020 and April 26, 2020 and then rehired them by December 31, 2020 (for loans made before the enactment of the Economic Aid Act on December 27, 2020) or by the last day of your covered loan period (for loans made on or after December 27, 2020).
- You fire an employee for cause; an employee voluntarily resigns; or an employee voluntarily requests and receives a reduction in hours.
- You have laid off employees, and then:
 - made a good faith, written offer to rehire,
 - documented the employee's rejection of that offer,
 - informed the state unemployment insurance office within 30 days of the employee's rejection of the offer (employees who reject offers of reemployment may forfeit eligibility for continued unemployment compensation), and
 - documented your inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020 (for loans made before the enactment of the Economic Aid Act on December 27, 2020) or by the last day of your covered loan period (for loans made on or after December 27, 2020).
- You can document in good faith that your business is unable to return to the same level of activity it was operating at before February 15, 2020, due to compliance with operating restrictions related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Loan Forgiveness

Is loan forgiveness automatic?

No. You must submit a separate loan forgiveness application.

- Borrowers of loans up to \$150,000 submit a streamlined 1-page PPP loan forgiveness application, known as the [PPP Loan Forgiveness Form 3508S](#).
 - Requests limited information: the number of employees you were able to keep on payroll as a result of the loan, estimated total payroll costs, the total amount of your PPP loan, and the requested forgiveness amount.
 - Must also attest that you accurately completed the forgiveness application and complied with the PPP loan requirements.
- Borrowers of loans exceeding \$150,000 will submit either the PPP Loan Forgiveness [Form 3508](#) (long form) or the [Form 3508EZ](#).

Loan Forgiveness

My loan is greater than \$150,000. How do I determine whether to file the long forgiveness form or the EZ form?

The “EZ” loan forgiveness application may be submitted by borrowers who can satisfy any of the following requirements:

- The borrower did not reduce salary or wages for any employee by more than 25% during the covered loan period as compared to the most recent quarter before the covered loan period, and did not reduce the number or hours of employees between January 1, 2020, and the end of the covered loan period (ignoring reductions related to employees who refused offers of rehire and whose positions could not be filled with similarly qualified workers).
- The borrower did not reduce salary or wages for any employee by more than 25% during the covered loan period as compared to the most recent full quarter before the covered loan period, and was unable to return to the same level of business activity it was operating at before February 15, 2020, due to compliance with official requirements related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Loan Terms

- Interest rate of 1%.
- 5 year maturity (if loans issued on after June 5) and 2 year maturity (if issued before June 5, 2020).
- No collateral or personal guarantees are required.
- Neither the government nor lenders will charge small businesses any fees.
- Loan payments deferred until after you submit your loan forgiveness application and the SBA remits the forgiveness amount to the lender.
- You have 10 months from the end of the covered period to submit the forgiveness application; otherwise, you will need to begin making payments on the loan.

Regulatory Compliance

Is the SBA auditing PPP loans?

- Yes, for any First Draw PPP Loans at or above \$2 million; it is unclear whether there will be an automatic audit for Second Draw PPP Loans.
- The SBA maintains the right to audit any loan.
- Anecdotally, about one in every 10 loans under \$2 million is audited.

PPP Regulatory Compliance

What happens if PPP loan funds are misused?

If you use PPP funds for unauthorized purposes, the SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for criminal and / or civil fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

PPP Regulatory Compliance

Will the details of my PPP loan be made public?

Yes. On November 5, a federal judge [ordered](#) the SBA to provide the names, addresses, and precise loan amounts of all individuals and entities that obtained PPP and EIDL loans by November 19, 2020. Loan data through August 20, 2020 is available on the [SBA website](#).

Client Frequently Asked Questions

Will I have to pay taxes on the loan?

- Maybe. The amount of any loan forgiveness will not be considered gross income under the federal Internal Revenue Code, although state and local tax authorities may or may not tax the forgiven amount.
- Additionally, the Economic Aid Act clarified that you can claim federal tax deductions for expenses paid with your PPP loan. This rule applies even if business expenses are paid for with the proceeds of a PPP loan that is fully forgiven. State and local authorities may take a different approach, so double check state and local requirements when you are preparing your business tax filings.

Client Frequently Asked Questions

I received an EIDL Advance/Grant last year. Will this reduce my PPP loan forgiveness?

- No. The Economic Aid Act amended the CARES Act to remove the requirement that borrowers subtract the amount of any EIDL advance (*i.e.*, grant) from their PPP loan forgiveness amount. You are now entitled to full forgiveness of your PPP loan even if you also received an EIDL advance.
- The SBA will issue rules to extend this benefit to borrowers whose PPP loans have already been forgiven and whose EIDL advance was deducted from the forgiveness amount.

Client Frequently Asked Questions

Can I apply for a PPP loan if I am receiving unemployment assistance?

- SBA guidance is ambiguous: [Y]ou should be aware that participation in the PPP may affect your eligibility for state-administered unemployment compensation or unemployment assistance programs, including the programs authorized by Title II, Subtitle A of the CARES Act, or CARES Act.
- Compare the amount of owner compensation to which you would be entitled from PPP funds with the amount of your unemployment benefit.
- Each state's unemployment rules are different.
- If you receive unemployment benefits and use your PPP funds to compensate yourself, you must report the PPP compensation to the state unemployment agency. Receiving PPP compensation may reduce or eliminate your unemployment benefit.
- If you receive unemployment benefits, you may use your PPP funds for business expenses other than your own compensation, such as other employees' payroll and other eligible expenses. This use will not impact your unemployment benefits.
- Remember, at least 60% of the forgiven amount must be used for payroll costs; if you use all or most of your loan for non-payroll expenses, the forgivable amount may be low.

Client Frequently Asked Questions

How much funding remains in the program?

- The SBA publishes a [weekly PPP report](#)
- As of February 21, 2021, approximately \$144.2 billion of the \$284.5 allocated to the PPP 2.0 remains available.
- The American Rescue Plan (a new stimulus package currently under consideration by Congress) would provide an additional \$7.5 billion in funding for the PPP.

Other Financial Relief Programs

- Economic Injury Disaster Loan (“EIDL”) Program
- Targeted Economic Injury Disaster Advance
- Shuttered Venue Operators (“SVO”) Grants
- State and local relief
- Private sector grants and loans
- Unemployment assistance

Cross Program Eligibility (from SBA Website)

	PPP Applicant	Shuttered Venue Operators Grant Applicant	COVID-19 EIDL Applicant
<u>PPP Recipient</u>	First Draw PPP borrowers may be eligible to apply for Second Draw PPP Loans	May apply for SVOG if received a PPP loan prior to 12/27/20	May apply for EIDL; PPP and EIDL can't be used for the same purpose/costs
<u>Shuttered Venue Operators Grant Recipient</u>	Not eligible to apply for PPP loan	May be eligible to receive a supplemental SVOG award	May apply for EIDL; SVOG and EIDL can't be used for the same purpose/costs
<u>COVID -19 EIDL Recipient</u>	May apply for PPP; EIDL and PPP can't be used for the same purpose/costs	May apply for SVOG; EIDL and SVOG can't be used for the same purpose/costs	The same business cannot apply for more than one EIDL

QUESTIONS?

Presented By

VOLUNTEER LAWYERS FOR THE ARTS AND LOWENSTEIN SANDLER LLP



VOLUNTEER LAWYERS FOR THE ARTS

Art Law Line: (212) 319-2787 ext. 1

VLANY@VLANY.ORG