

PPP TOOLBOX

THE ECONOMIC AID ACT

How does it impact nonprofits using the Paycheck Protection Program?

Updated March 25, 2021

On December 27, 2020, a new COVID-19 relief package, the [Economic Aid Act](#), was signed into law that authorized over \$284 billion in PPP loans to new borrowers who have not previously obtained a PPP loan and for “Second Draw Loans” to existing borrowers who previously received a PPP loan. For those who received loans in 2020 and those who will apply for loans in 2021, it also streamlined the forgiveness process for some borrowers and expanded allowable expenses. Some of the key components of the Act include:

- ▶ The requirements for Second Draw Loans include more stringent eligibility criteria than applied to the initial PPP loans, i.e. borrowers must have **300 or fewer employees** AND have experienced a **25% or greater decrease in gross receipts** in any calendar quarter in 2020 (compared to the same quarter in 2019 or for the entire calendar year 2020 (compared to 2019). Certain (c)(3) nonprofits that engage in extensive lobbying and advocacy work, including think tanks, are prohibited from applying.
- ▶ Changes to the law streamlined the forgiveness application for **loans of \$150k or less** and significantly expanded the definition of allowable nonpayroll expenses. These changes are generally retroactive and apply to 2020 loans as well as new loans and Second Draw Loans.
- ▶ While the Economic Aid Act allowed for loans to be obtained through March 31, 2021, the PPP Extension Act of 2021 extended the application deadline to **May 31, 2021** subject to the availability of funds.

The SBA released new guidance implementing the Act in January, the [Second Draw Loan application form](#) on January 8 and opened up the process for all lenders to start submitting applications, and [new forgiveness applications](#) for all who have yet to apply for forgiveness or received their forgiveness result. While we expect the SBA to release further FAQs, this guidance highlights changes in the PPP law that impact nonprofits, including citations to the law for additional detail. We encourage you to check out the [SBA’s PPP website](#) as they release new guidance and watch for updates from your lender.

2020 and 2021 PPP Loans: Retroactive Changes to the Forgiveness Application, Allowable Expenses and Other Changes

The new law includes changes to the forgiveness application process and definition of allowable expenses and other important changes that are both retroactive and applicable to new loans.

The Economic Aid Act: Impact on Nonprofits

Streamlined Forgiveness Application for Loans of \$150k or Less (retroactive to 2020 loans) (Section 307)

- ▶ For loans of \$150,000 or less, **Borrowers are only required to submit a 1-page forgiveness application** which the [SBA issued on January 19th](#). Only those with loans **\$50,000 or less** are exempt from any applicable wage or workforce reduction penalties part of PPP guidelines. Borrowers with loans \$50,001 - \$150,000 who had wage or workforce reductions may need to reduce their forgiveness request accordingly. We suggest those Borrowers use the Standard Application as the place to document and determine their forgiveness amount but still use the [Streamlined Application](#) to actually submit their forgiveness request.
- ▶ While they don't need to submit any backup documentation to their lenders, borrowers are **still required to attest to compliance with the PPP requirements and maintain back up records**. However, the document retention requirements are less onerous, with borrowers required to maintain employment records (for 4 years) and other relevant records (for 3 years).

New Allowable Expenses Relevant to Nonprofits (retroactive to 2020 loans) (Section 304 and 308)

- ▶ **Payroll costs** were broadened to expressly include **group life, disability, vision or dental insurance benefits**. (Section 308)
- ▶ For loans not already forgiven as of enactment of the new law, the **new categories of allowable nonpayroll expenses were added** for “covered operations,” “covered property damage,” “covered supplier costs,” and “covered worker protection expenditures”¹. This would include costs such as Personal Protective Equipment, payroll and accounting software, video conferencing software, and others. It is worth noting that forgiveness continues to be subject to a **40% limit** on non-payroll costs. (See Section 304 and the [pages 48-51](#) of the Interim Rule issued January 6th).

Changes to the Forgiveness Process (retroactive to 2020 loans) (Section 306)

- ▶ The **Borrower may designate the Covered Period** for their loan to be a period that begins on the date of origination and ends on a date selected by the borrower that falls between 8 - 24 weeks after the date of origination. This change is retroactive for those who took out loans in 2020 as well as prospective. This would allow Borrowers who need past December 31 to reach 24 weeks to do so (e.g., they took out a loan in July or August).

Access to Additional Loan Funds from 2020 Loans (Section 312)

- ▶ If a borrower has not already obtained forgiveness, the **borrower may be eligible to request additional loan funds** in special circumstances where a) the borrower didn't accept the full amount of the original loan available to the borrower or b) the borrower repaid a portion of the loan.

The Economic Aid Act: Impact on Nonprofits

Second Draw Loans: Available to Borrowers Who Obtained PPP Loans in 2020 (Section 311)

The SBA has started accepting applications from lenders for Borrowers who wish to apply for Second Draw Loans in 2021; these are separate loans from your first PPP loan in 2020. The SBA has released an [overview](#) and the [Second Draw Loan Application form](#).

What 501(c)(3) Nonprofits are Eligible

- ▶ Borrowers must meet the following major criteria:
 - **Already received a PPP loan**
 - **300 or fewer employees**
 - **[25% drop in gross receipts](#) in any quarter in 2020 compared to 2019**
 - **Finished spending their first loan** before they receive Second Draw loan funds
 - **NOTE: Certain (c)(3) nonprofits** that engage in extensive lobbying and advocacy work, including think tanks, **are prohibited.**
- ▶ You do not need to have filed for forgiveness in order to apply - just certify that you have finished spending the loan. You must apply for forgiveness on the original loan before or at the same time as applying for forgiveness on the Second Draw loan.

Definition of “Gross Receipts” for Eligibility and Required Documentation

- ▶ “**Gross receipts,**” as used to determine if the nonprofit meets the eligibility test based on drop in revenue, has the same meaning as used in Internal Revenue Code Section 6033 governing the filing of **990 annual returns** when you report revenue. Nonprofits will generally look at all revenue booked in their general ledger and remove revenue that wouldn’t show up on the 990, mainly donated services, donated facilities and unrealized gains and losses.
- ▶ **This is the most relevant component of determining eligibility for nonprofits** so we have developed a [separate guide](#) answering questions on how to calculate gross receipts, determine if nonprofits meet the revenue reduction requirement and document the result. [How Should Nonprofits Calculate Gross Receipts When Determining if they are Eligible for Second Draw PPP Loans?](#)

Other Key Terms Related to Second Draw Loan

- ▶ **Loan Necessity Certification:** Required for Second Draw Loans, need to follow same process of documenting need used in 2020.
- ▶ **Loan Amount Calculation:** Follows the same approach as used for the original PPP loans, i.e. 2.5 times the average monthly payroll with three options for defining and taking the average: 12 months prior to applying for the loan, Calendar year 2020 or Calendar year 2019.
- ▶ **Maximum Loan Amount:** Capped at \$2 million.
- ▶ **Covered Period:** The Borrower may now designate the covered period to be a period 8-24 weeks after receipt of the loan funds.
- ▶ **Allowable Payroll and Nonpayroll Expenses:** Generally same as for the original PPP loans, as expanded by the new PPP law described above, except wages related to payroll tax credit and employee retention credit are excluded from Payroll. On nonpayroll items, such as rent, mortgage interest and utilities, only expenses where organizations have proof of leases, mortgages or service agreements in place by 2/15/20 are eligible.

The Economic Aid Act: Impact on Nonprofits

- ▶ **Documentation:** No additional documentation for payroll costs required if organizations use calendar year 2019 information previously submitted and ask for same loan amount.

Qualified nonprofits interested should reach out to their lender to understand what their process will be for second draw loans and begin completing a [draft version of the application](#). Organizations may find it easier, faster and more streamlined to work with the lender they received their first loan from although we have not seen any guidelines indicating organizations cannot switch to another lender, they may prefer that would accept their application.

Special Rules and Exclusions

- ▶ Organizations are **excluded if they receive or plan to receive a grant under the Shuttered Venue provisions** of the COVID-19 relief bill. (*More below*)
- ▶ Organizations are **excluded if they are primarily engaged in political or lobbying activities**; or are organized for research or for **engaging in advocacy in areas such as public policy** or political strategy; or describe themselves as **think tanks** in public documents.
- ▶ Various special rules apply, notably to news organizations ([Section 317](#)), destination marketing organizations and **501(c)(6)** organizations ([Section 318](#)) and special terms apply to new organizations, seasonal employers, business concerns with more than one physical location, NAICS 72 entities (Accommodation and Food Services) and affiliates.

Prohibition on Use of Loan Proceeds for Lobbying Activities (Section 319)

- ▶ The new PPP law prohibits PPP proceeds from being used to pay for **various** lobbying expenses.ⁱⁱ This law appears to be prospective and apply to new loans and Second Draw Loans, as no retroactive date is provided. Organizations should seek advice from legal counsel if they are concerned about this issue.

Application of Exemption Based on Employee Availability for New Loans (Section 311(b))

- ▶ For new loans, the deadline for restoration of employee levels in certain circumstances (known as “Safe Harbor 2”) is extended to the end of the covered period. The outside date for the attempt to rehire based on employee availability (as added in the Flexibility Act and included in the “FTE Exceptions”) is extended to the end of the covered period.

Other Highlights Relevant to Nonprofit Organizations

Set Asides

- ▶ The new PPP law provides set- asides to benefit smaller borrowers and underserved communities, including: \$15 billion for small first-time borrowers with 10 or fewer employees or loans less than \$250,000 in low or moderate-income neighborhoods and \$25 billion for Second Draw Loans to these same categories of borrowers.

PPP Audit Plan for Loans \$150k and Greater (Section 307)

- ▶ The **SBA Administrator is required to submit an audit plan to Congress within 45 days after enactment of the law**. The plan must address the policies and procedures for conducting audits and the metrics used to determine which loans will be audited; this is intended to establish greater transparency.

The Economic Aid Act: Impact on Nonprofits

EIDL Grant Advance

- ▶ EIDL Grant Advances are available again and are no longer deductible from the PPP loan amount. Further, grants deducted from PPP loans will be restored and a process created to enable borrowers to receive the grant funds back.

Grants for Shuttered Venue Operators

- ▶ Grants are available for up to \$10 million or 45% of 2019 revenue. Organizations receiving this grant are not eligible for a PPP Second Draw Loan.
- ▶ Eligibility: Includes live venue promoters, museums and performing arts organization. Must demonstrate at least a 25% reduction in revenue.

Employee Retention Tax Credits

- ▶ Retroactive to March 2020 and extended through June 2021
- ▶ Up to \$5,000 per employee in 2020 and \$14,000 per employee in 2021
- ▶ Can receive this and PPP Loan (previously had to choose one or the other). Still cannot receive this credit for wages that were forgiven by PPP
- ▶ Eligibility criteria: 20-50% reduction in quarterly revenue *or* Subject to partial or full government shutdown

Extension of Paid Leave Tax Credits

- ▶ Employers are no longer mandated to provide additional leave, but those employers who do provide employees paid leave (on top of existing PTO) for Covid or family leave, can receive tax credits through March 31.

ⁱ New allowable expenses include:

- **“Covered Operations”** - intended to cover business software or cloud computing services that facilitates business operations (see Section 304 and SBA rules anticipated for precise details)
- **“Covered Property Damage”** - intended to cover 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”** - goods for essential operations; must be contracts in existence before the covered period, except for perishable goods (see Section 304 and SBA rules anticipated for precise details)
- **“Covered Worker Protection Expenditures”** - include specified facility improvements and protective equipment (see Section 304 and SBA rules anticipated for precise details)

ⁱⁱ The law prohibits using PPP funding on:

- **Lobbying activities**, as defined in Section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602). *Note this definition of lobbying is broader than the IRS definition under Section 4945(d)(1)*
- **Lobbying expenditures** related to a State or local election
- Expenditures designed to **influence the enactment of legislation**, appropriations, regulation, administrative action, or Executive order proposed or pending before Congress or any State government, State legislature, or local legislature or legislative body.