



# ECONOMIC AID ACT OF 2020 OVERVIEW AND SUPPORTING INFORMATION

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# OVERVIEW

The Economic Aid Act of 2020 was signed into law on 12-27-2020. Barring further Congressional or Regulatory Action, this Act will sunset on 3-31-2021. If you desire to participate in either the PPP “First Draw” or “Second Draw” you need to be proactive and file the applications at your earliest opportunity.

This Act provides financial and other benefits for the nation’s small business owners. These include the following:

- The re-establishment of the PPP program, as well as the creation of a second round of PPP funding for eligible businesses. For first-time borrowers, they are eligible for “First Draw Loans”, and for those seeking a second loan, they would be eligible for “Second Draw Loans”
- There are differences in the eligibility rules for the two programs, and the Second Draw credits are more targeted in their eligibility requirements
- The types of entities eligible for funding has expanded to include 501(c)6 organizations, housing cooperatives, veterans’ organizations, Tribal businesses, small agricultural cooperatives, eligible nonprofit organizations, and destination marketing organizations
- More flexibility has been given for seasonal and farm businesses, as well as partnerships and tipped employees
- Some business types can seek an increase in their First Draw loan amount versus obtaining another PPP loan if they:
  - have not filed for forgiveness and
  - the reason for the increase was based on a rule change and not a miscalculation by the borrower
- For those seeking a “Second Draw” PPP Loan, those businesses that have the NAICS code of 72 (accommodations and food services and drinking places) are eligible for 3.5X eligible monthly payroll expenses versus 2.5X for all other codes.
  - The definition of payroll costs has been expanded to include group life insurance, group disability insurance, group vision insurance, and group dental insurance (retroactive for all eligible entities)
  - A description of eligible businesses in NAICS Code 72 is included in the final section of this package.
- PPP borrowers can set their covered period to be any length between 8 and 24 weeks. The alternative covered period has been eliminated
- PPP loans will cover additional expenses, including operations expenditures, property damage costs, supplier costs, and worker protection expenditures
- Expenses included in the borrower’s PPP forgiveness application can also be deducted from their tax return

- EIDL advances will no longer be deducted from the amount of PPP forgiveness (retroactive to all PPP advances)
- PPP funding is now available for new entities if they were operational on or before 2/15/2020
- Chinese owned entities are ineligible for PPP financing, nor can businesses owned by members of the Executive Branch or Congress, or their spouses. In addition, publicly owned companies cannot apply
- Businesses in bankruptcy are not eligible for PPP financing
- All borrowers, either “First Draw” or “Second Draw” applicants will need to satisfy a “Necessity Test”. This means they will either need to certify or provide supporting financial documentation to support the fact that they need/needed the funding
- All Borrowers that either declined to accept their original PPP loan or have repaid it in full can now apply for another “First Draw” Loan
- Additional guidance has been provided on the definition of “gross revenues”
- The PPP Loan Portal will open on 1-11-2021 for the following entities:
  - Community Development Financial Institutions
  - Minority Depository Institutions
  - Certified Development Corporations and
  - Micro-lending Intermediaries
- No Portal opening date for conventional financial institutions has been promulgated.
- \$15 billion has been set aside for borrowers with no more than 10 employees for loans of \$250,000 or less to businesses in low-to-moderate-income neighborhoods

There is a possibility that more changes may be promulgated as the rules get further refined.

## THINGS TO DO PRIOR TO APPLYING FOR A LOAN

The following steps should be taken by the borrower prior to completing and submitting an application:

However, in anticipation of the portal for “first” or “second” advance PPP loans, the following recommendations have been promulgated by multiple sources. These include:

- **Determine if you are** eligible, especially for those seeking a 2<sup>nd</sup> advance, for those rules are more restrictive. In addition, applicants are required to certify/prove that they need the funding; that the loan is “necessary” for them to continue to operate
- **Run the numbers**, to determine the amount you may be able to seek, based on the revised guidelines issued 1/6/21. These guidelines are published in the last section of this package. Some entities will benefit more than others
- **Revisit your PPP forgiveness application**, if you received funds in the first round, to be sure that you have properly documented how the funds were used based on the revised use of proceeds
- **Recalculate business expense deductions**, based on the revised rules
- **Review both borrower and lender loan applications**, to ensure you know exactly what information you will need to provide.
- **Call your lender**, if you anticipate either seeking a 2<sup>nd</sup> loan or want to revisit the amount received from your first loan. Under the revised rules, many firms may find it advantageous to seek an increase in their first loan versus seeking a 2<sup>nd</sup> round of funding. However, it is not known if lenders will create a portal for increasing existing PPP debt or require their borrowers to seek a 2<sup>nd</sup> loan. In addition, if your lender has determined they will not participate, seek out other finance avenues, include online “fintech” lenders
- **Contact your local SBDC** should you have any questions whatsoever

## PPP “FIRST DRAW” OVERVIEW

The maximum amount for loans available to “First Draw” borrowers is \$10 million and the maximum single-location number of employees remains at 500. Other provisions include:

- The business had to have been in operation before 2-15-2020
- Borrowers must be able to certify that the loan was “necessary”. The SBA has stated that they will not require proof for loans under \$150,000, but other agencies (IRS etc.) may do so
- \$15 billion has been set aside for borrowers with no more than 10 employees or loans of \$250,000 or less to entities located in low-to-moderate-income neighborhoods
- The maximum number of employees at a single location remains at 500
- Eligibility Entities has been expanded, and now includes the following:
  - Any business entity
  - Independent contractor
  - Self-employed individual
  - Sole proprietor
  - Non-profit
  - Veterans’ organizations
  - Tribal businesses
  - Housing cooperatives
  - Small agricultural cooperative
  - Eligible 501 (c) 6 entities must have 300 or fewer employees, lobbying must not exceed 15% of receipts or activities, with total budgets of \$1 million or less)
  - Eligible nonprofit new organizations
  - Destination marketing organizations
- Seasonal employer definition has been re-worked and now is an entity that operates more than 7 months or learned no more than one-third of its revenue in any 6 months in the prior calendar year. Furthermore, they can calculate PPP amounts based on the average monthly payroll costs for a 12-week period selected by the borrower that began 2/15/19 or 3/1/19, and ended 6/30/19, or they can elect to use any consecutive 12-week period beginning after 2/14/2020 and ending before 1/1/21, multiplied by 2.5X, not exceeding \$2 million

- New entities can qualify based on the average monthly payroll costs and non-payroll up through the date when they apply, multiplied by 2.5, not to exceed \$2 million
  - The eligible use of proceeds has been expanded to include:
    - Payroll costs:
      - Group life insurance
      - Group disability insurance
      - Group vision insurance
      - Group dental insurance
      - Tip income can now be included
    - Non-payroll costs:
      - Business software or cloud computing
      - Costs incurred due to social unrest not covered by insurance
      - Supplier costs
      - PPP and other expenses mandated by federal, state, or local health agency requirements
- Farmers and ranchers can now use gross income for either 2019 or 2020 instead of net income
- The list of ineligible businesses has been expanded to include:
  - Entities that have permanently closed
  - Businesses not in operation on 2/15/2020
  - Publicly traded companies
  - Lobbying organizations
  - Hedge funds or private equity firms
  - Entities organized in the People’s Republic of China
  - Entities registered under the Foreign Agents Registration Act
  - Executive Branch leaders and members of Congress and spouses with 20%+ ownership
  - Household employers
  - Entities in bankruptcy
- Provisions also include the ability to submit new applications for borrowers who have returned/repaid all their original PPP loan prior to applying for a new “First Draw” loan
- It should be noted that each financial institution may have requirements for information over and above the requirements mandated by the SBA and that they will use their own application forms.

## PPP “SECOND DRAW” OVERVIEW

The provisions of the Economic Aid Act of 2020 allow borrowers who received an earlier PPP Loan to be able to reapply for another loan. Hence the name “Second Draw”. While similar to the original PPP Loan program, there have been some changes in guidance done so with the intent of providing more funding for businesses and other entities that were unable to obtain funding in earlier rounds. Specifics include:

### *Eligibility:*

- Applicant cannot have more than 300 employees in a single location
- Borrowers must be able to certify that the loan is “necessary” to ensure their continued survival
- Must have experienced a 25% or greater reduction in gross revenues between 2019 and the same period in 2020
- Borrowers must have either used all their first PPP or will use all first PPP loan before the 2<sup>nd</sup> loan is disbursed
- The borrower must calculate the revenue reduction by comparing the borrower’s quarterly gross receipts for 2020 and the same period in 2019
- Alternatively, borrowers can use their annual receipts for 2019 and 2020 to show a 25% reduction
- If applicant entity was not in business during the 1<sup>st</sup> or 2<sup>nd</sup> quarter of 2019 but was in operation during quarters 3 and 4 in 2019, must demonstrate a 25% reduction in gross revenues in any quarter of 2020 would be eligible
- If applicant was in operation for only quarter #4 of 2019 and could show a corresponding reduction of 25% or more in any quarter of 2020 then they would be eligible
- Borrowers should not include proceeds from the first PPP loan in their gross revenues for 2020
- Business entities with NAICS code starting with “72” (Accommodation and Food Services) can have up to 500 employees per location. A listing of eligible businesses is included in the final section of this package
  - Business entities under this category can qualify for more than one PPP “Second Draw” loan if each location has a separate EIN
- The affiliation rules for the first round of PPP loans apply for PPP2 loans
- Independent contractors, sole proprietors, non-profit organizations, veterans’ organizations, tribal business concerns are eligible to participate in this program



### ***Ineligible Entities:***

- Lobbying firms
- Firms organized in The People's Republic of China or Hong Kong
- Individuals that register under the Foreign Agents Registration Act
- Those that receive grants under Section 324 of the EAA
- Firms associated with the President, Vice President, head of an Executive Department, or member of Congress, or the spouse of any of these that hold a 20%+ interest in the entity
- Any publicly traded company
- Entities in bankruptcy

### ***Terms and Conditions***

- The general terms and conditions are the same as the first round of PPP funding, including:
  - No collateral or personal guarantees
  - Any resulting loan will be repayable over 5 years at 1% interest
  - 2.5X eligible monthly payroll expenses, except for NAICS 72 (Accommodation and Food Services) borrowers which can receive 3.5X for the same monthly expenses
- The use of proceeds remains at 60% for payroll and 40% for other eligible expenses, with an expanded use of eligible expenses, including:
  - Payroll costs now include group life, disability, vision, and dental insurance (employer portion)
  - PPE costs that were incurred in response to national, state, or local health mandates
  - Cloud computing costs
  - Costs related to property damage due to public disturbances in 2020 that were not covered by insurance
  - Supplier costs that were essential to the survival of the borrower
- The maximum loan amount is \$2 million.

### ***Application Requirements:***

- SBA guidelines are designed to mirror those for the first round of PPP funding. However, lender requirements may differ
- No additional documentation to substantiate payroll costs will be required if:
  - Applicant used calendar year 2019 figures to determine its First Draw PPP Loan amount
  - They used calendar year 2019 figures to determine its Second Draw PPP Loan amount instead of calendar year 2020
  - The Lender for the applicant's "Second Draw" PPP Loan is the same as the lender that made the applicant's "First Draw" PPP Loan

- Loans greater than \$150,000, the applicant must also submit documentation adequate to establish that the applicant experienced a revenue reduction of 25% or greater in 2020 vs. 2019
  - Documents may include tax forms
  - Annual tax forms
  - Quarterly financial statements or bank statements
- Loans \$150,000 or less, this documentation is not required at time of application, but must be provided in conjunction with submission of the forgiveness application
- A new application form has been created (2483-SD), a/k/a Paycheck Protection Program Second Draw Borrower Application Form, or the Lender's equivalent form
- Applicants will be required to certify that they:
  - Will not seek a 2<sup>nd</sup> PPP2 loan
  - Gross revenues declined by at least 25% for the same period(s) year over year
  - That all proceeds from the first PPP loan had been used or will be used before the 2<sup>nd</sup> loan is advanced
  - Are not an entity organized under the laws of the People's Republic of China or Hong Kong
  - Are not registered under the Foreign Agents Registration Act
  - Are not lobbying or political organization

***Forgiveness:***

- Same process as for PPP1 loans, with the same timeline of 10 months after the funds are used
- If the amount of the PPP2 loan was \$150,000 or less, if applicant did not do so at time of approval, they must provide documentation of gross revenue reductions of at least 25% at time of applying for forgiveness

As with the "First Draw" provisions, the above rules may be further refined as the program develops.

## CHANGES IN SBA PROGRAMS AND FEDERAL TAX POLICIES AND SUPPORTING INFORMATION

The Economic Aid Act also includes a significant number of changes to existing SBA and other programs that will benefit small businesses. Include in these changes are:

- The Employee Retention Tax Credit was expanded in the following ways:
  - The program was extended through June 30
  - The decline in gross receipts has been decreased from 50% to 20%
  - The tax credit, originally 50% of up to \$10,000 in qualified wages, (approximately \$5,000 per employee) has been increased to 70% of qualified wages of up to \$10,000 per quarter
  - The employee size of companies has been increased from 100 to 500
  - Business can now claim the tax credit and the PPP loan
- SBA loan debt relief extension has changed:
  - New and existing 7(a), 504 and microloans will receive an additional 3 months of principal and interest relief, capped at \$9,000 per borrower per month starting in February
  - Businesses in hard-hit industries (not sure of the definition here) will receive an additional 5 months of relief
  - The SBA will also cover the principal and interest payments on new loans approved between February 1<sup>st</sup> and September 30<sup>th</sup>, also capped at \$9,000 per month
- SBA Guarantees have changed:
  - SBD guarantees will increase to 90% and will waive borrower and lender fees on 7(a) and 504 loans.
- EIDL First Advance and PPP Forgiveness provisions have changed:
  - The amount of the EIDL advance will no longer be deducted from the amount of PPP debt forgiveness
  - This change is retroactive. This means that for any PPP debts already forgiven for the amount reduced by the EIDL advance, the SBA will reimburse lenders for all principal and accrued interest which will, in turn, pay off the amount owed by the borrowers

- Revised Guidance on Estimating Costs (Run the Numbers Guidance):
  - “First Draw” Loans:
    - Average Monthly Payroll
      - Salaries and wages, commissions (\$100,000, capped on a pro-rata basis)
      - Employer portion of covered benefits
      - Employer portion of group insurance payments
      - Tip income
      - Sick leave, family leave
      - Separation
      - State and local taxes
      - Vacation
    - 2.5X average monthly payroll + EIDL proceeds (excluding EIDL first advance)
    - Number of employees
    - Purpose of the loan
      - Payroll costs
      - Rent/mortgage interest
      - Utilities
      - Covered Operations Expenditures
      - Covered property damage
      - Covered supplier costs
      - Covered worker protection expenditures
      - Other
  - “Second Draw” Loans
    - Average Monthly Payroll (same as for “first draw” loans)
    - 2.5X (or 3.5X for NAICS 72 applicants) equals Loan Request Amount (up to \$2 million)
    - Number of employees
    - Purpose of loan (same as “First Draw”)
    - PPP First Draw SBA Loan Number

Note: Reduction in Gross Receipts of at least 25% (Applicants for loans of \$150,000 or less may leave blank but must provide upon or before seeking loan forgiveness or upon SBA request)

- 2020 Quarter Gross Receipts
- Reference Quarter Gross Receipts

Lenders will probably require at a minimum, the following for proof of revenue reductions, including:

- 2019 tax returns
- Quarterly income statements
- Bank statements
- Payroll summary report
- Payroll tax filings (IRS 940/990) IRS 941 for applicable quarters
- Identity documents: driver's license or passport for principals

Notes:

- To obtain maximum forgiveness, borrowers must use at least 60% of the proceeds on eligible payroll expenses
- Lenders can add their own requirements to the application process
- Borrowers will need to also provide other information and make certifications and attestations
- NAICS Codes 72 include the following businesses:
  - Accommodation and Food Services
    - Accommodation
      - Hotels and Motels
      - Casino Hotels
      - Bed-and-Breakfast Inns
      - All Other Traveler Accommodation
      - RV (Recreational Vehicle) Parks and Campgrounds
      - Recreational and Vacation Camps (except Campgrounds)
      - Rooming and Boarding Houses
    - Food Service and Drinking Places
      - Food Service Contractors
      - Caterers
      - Mobile Food Services
      - Drinking Places (Alcoholic Beverages)
      - Full Service Restaurants
      - Limited-Service Restaurants
      - Cafeterias, Grill Buffets and Buffets
      - Snack and Nonalcoholic Beverage Bars