



The Paycheck Protection Program Update: New and Existing Borrowers

Venture Law Meetup Webinar
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The CARES Act

- March 27, 2020 – CARES Act signed into law to provide relief to smaller businesses and workers, critical industrial sectors, etc.
- More than \$360 billion in immediate loan assistance to smaller businesses
- Temporary New SBA Business Loan Program:
Paycheck Protection Program (PPP)
- Expanded Economic Injury Disaster Loan (EIDL) Program
- New Federal Reserve Main Street Loan Program

Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (“HHSB Act”)

- December 27, 2020 – Consolidated Appropriations Act, Pub. L. 116-93, Div. N, Title III, renewed and updated the PPP.
- Allocates additional \$284.5 billion primarily for:
 - New, first-time PPP loans under existing PPP framework
 - “Second draw” PPP loans for certain existing PPP borrowers
 - Supplemental PPP loans for companies that returned a loan or did not borrow the maximum amount.
 - Set-asides for loans to <10 employee companies, new borrowers, etc.
- Amendments to section 7(a)(36)(A)(viii)(I)(aa)(EE)!
- Borrowers have until March 31, 2021, to apply for a PPP Loan.

Set Aside for Companies With Under 20 Employees

- February 22, 2021, Biden Administration Announced:
 - 50% of 284B in Round 2 Still Available.
 - Average loan size is \$74,000 and 80% of loans to companies with fewer than 10 employees.
 - Contrast with \$659B in Round 1 and \$100,729 average loan size.
- Starting February 24, two week application period exclusively for business with fewer than 20 employees:
 - Remove exclusion for non-fraud felony convictions.
 - Remove exclusion for late federal student loans
 - Expand allowed non-US ownership

New First Time PPP Loans

- First-time PPP borrowers are subject to the PPP eligibility rules established under the CARES Act. Current statutory maximum of \$10M.

Expanded New Loan eligibility vs. CARES Act.

- a) Certain news organizations;
- b) Certain housing cooperatives;
- c) 501(c)(6) organizations (15% lobbying activity restriction);
- d) Destination marketing organizations (15% lobbying activity restriction); and
- e) Expanded calculation and eligibility guidance for farmers and ranchers.

Narrowed New Loan eligibility vs. CARES Act.

- a) Public companies;
- b) Recipients of SBA Shuttered Venue Grants;
- c) Applicants primarily engaged in lobbying activities;
- d) Foreign Agents Registration Act of 1938 registrants; and
- e) Applicants with 20 percent or more direct or indirect ownership by a Chinese company or with one or more board members resident in China.

“Second Draw” Loans

- Existing PPP borrowers may apply for a "second draw" under their existing PPP Loans. Must meet stricter

eligibility criteria than New Loans. Proceeds are generally subject to a \$2M cap.

Eligible—Most PPP borrowers that:

- Have used all their existing PPP Loans no later than the date of disbursement of Second-Draw Loans
- Have 300 or fewer employees; **and**
- can demonstrate $\geq 25\%$ loss gross revenues in any 2020 quarter compared to same 2019 quarter (alternatives for PPP borrowers not in business for any portion of 2019)

Ineligible—Businesses with PPP Loans:

- Engaged in political or lobbying activities;
- Owned 20% or more, directly or indirectly, by an entity created or organized under the laws of the People’s Republic of China or Special Administrative Region of Hong Kong, or that has “significant operations” in those jurisdictions; **or**
- Businesses that have a resident of the People’s Republic of China as a board member

HHSB Act – Other changes

- Borrowers can choose the length of the covered period over which they must use the proceeds of their New Loan, or Second-Draw Loan
- The covered period can range from 8 to 24 weeks, at the borrower's election
- Specific definition for “seasonal employer”:
 - operates for no more than 7 months in any calendar year or
 - in the past calendar year, had any collection of 6 months with average receipts no more than 1/3 the average receipts of the other 6 months

Loan Eligibility

Am I Eligible?

- 500 or fewer employees (full-time, part-time or any other status), or
- Are a small business under the usual SBA size standards, or
- Are a 501(c)(3), a 501(c)(6), a 501(c)(19) veterans organization, or a tribal business that meets either the 500-employee standard or the SBA size standard for your industry if it is employee-based
- You were **in business on Feb 15, 2020** and had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on Form 1099-MISC
- AND
- Not an ineligible passive or speculative business historically not eligible for SBA loans under 13 CFR 120.110

Affiliation Rules – New and Second-Draw Loans Under HHSB

The SBA counts your affiliates for assessing all of those metrics.

Broad definition of affiliate from SBA program.

- The CARES Act Provides a Waiver of the Affiliation Rules Under the PPP for:
 - *Accommodation and Food Service Providers*: any business with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned an NAICS code beginning with 72;
 - *Franchises*: any business operating as a franchise that is assigned a franchise identifier code by the SBA; and
 - *SBIC-Funded*: any business that receives financial assistance from an SBIC.

Paycheck Protection Program: How Much Can I Borrow?

- 2.5x the borrowers average total monthly payroll costs incurred during either the 12 months before the loan or calendar year 2019, up to a maximum of \$10 million.



- INCLUDED Payroll Costs:**

Employers	Sole Proprietorships, Independent Contractors, Self-Employed
<ul style="list-style-type: none"> Salary, wage, commission to employees Leave pay (vacation, parental, sick) Health care benefits costs Retirement benefits State and local tax Allowance for dismissal or separation 	<p>Sum of payments to or income of sole proprietorship or independent contractor that is wage, commission, income, net earnings from self-employment, or similar and that is not more than \$100k in one year, as pro-rated</p>

Paycheck Protection Program: How Much Can I Borrow? (Cont.)



EXCLUDED Payroll Costs:

Employers, Sole proprietorships, Independent Contractors, Self-Employed

- Compensation of an individual employee in excess of an annual salary of \$100,000, as prorated
- Compensation to employees who live outside of US
- Payroll taxes and income taxes to employer
- Qualified sick leave wages or family leave wages for which credit is allowed under Families First Coronavirus Response Act

Paycheck Protection Program: How Much Can I Borrow? (Cont.)



Do not include independent contractors, only employees. They are supposed to apply for their own PPP loans.

But do include general partners.

Do not include payroll costs of your affiliated companies. Each company applies for its own PPP loan.

Maximum of \$20 million across a group of affiliates!

“Second Draw” Loans, Eligibility

- Existing PPP borrowers who, besides the original qualifications, have <300 employees
 - For NAICS 72 businesses and eligible news organizations, <300 per location
- Will have fully used the first PPP loan by the time the 2nd Loan is disbursed
- Gross receipts declined at least 25%, year on year, in at least one quarter in 2020
 - If you're self-employed, annual tax returns will suffice
 - For loans under \$150k, certify only, documentation at the forgiveness stage
- Only one Second-Draw Loan is permitted per existing PPP borrower.

“Second Draw” Loans, Amount

- Maximum loan size is 2.5 times average monthly payroll, up to \$2M.
- PPP borrowers with an NAICS code 72 (e.g., restaurant and hotel industries) may borrow 3.5 times average monthly payroll, up to \$2M.
- Unresolved issues with the first loan will block a second loan. SBA says it will act swiftly on those unresolved issues.

Paycheck Protection Program: HHSB Act Expansion of Eligible Loan Forgiveness Expenses

The HHSB Act expands the list of expenses eligible for forgiveness to include payments for:

- Business software or cloud computing services that facilitate business operations;
- product or service delivery;
- the processing, payment, or tracking of payroll expenses;
- human resources;
- sales and billing functions;
- accounting or tracking of supplies, inventory, records, and expenses.

Borrowers may also use PPP funds to pay for:

- Costs related to property damage and vandalism or looting due to public disturbances in 2020 not covered by insurance or other compensation;
- Expenditures made to suppliers for certain goods in connection with a borrower's business; and
- Costs incurred in connection with compliance with COVID-19 related health and safety guidelines, including sanitation standards, social distancing requirements, and other COVID-19 worker or customer safety measures.

Paycheck Protection Program: Loan Forgiveness

- How Much will be Forgiven?
 - Eligible Amount = Qualifying costs over the “covered period” beginning on date of loan, running 8-24 weeks.
 - Payroll must be 60% of the total.
 - Subtract the amount by which any employee’s wage was reduced, by comparison to the “reference period.”
 - Reduce by a percentage factor for reductions in FTE count, compared to the “reference period.”

Paycheck Protection Program: Loan Forgiveness

- How Much will be Forgiven?
 - Forgiveness Can be Reduced by:
 - Reduction in number of employees

$$\text{Payroll Cost} \times \text{Avg. No. of FTEs per month for 8-week period} \div \begin{cases} \text{Option 1: Avg. No. of FTEs per month from 2/15/19 – 6/30/19} \\ \text{Option 2: Avg. No. of FTEs per month from 1/1/20 – 2/29/20} \end{cases}$$

- Reduction based on reduction of salary

$$\text{Payroll Cost} - \begin{cases} \text{(For employees who did not earn during any pay period in 2019 wages at an annualized rate more than \$100,000)} \\ \text{Amount of reduction in wages > 25\% compared to 1/1/20 – 3/31/20} \end{cases}$$

Paycheck Protection Program: Loan Forgiveness – HHSB Act Simplification

- How Much will be Forgiven?
 - The HHSB Act simplified some of the loan forgiveness process
 - Borrowers who receive loans of \$150,000 or less will be able to apply for loan forgiveness using a one-page loan application, which will require the borrower to provide:
 - The number of employees the borrower was able to retain because of the covered loan;
 - The estimated amount of the loan proceeds spent on payroll; and
 - The total loan amount
 - Borrowers must also certify that they complied with all program requirements and retain applicable records proving compliance

Paycheck Protection Program: Loan Forgiveness

- Special rules for re-hiring or restoring pay by June 30, 2020
 - Reductions in employment or wages that occur between February 15, 2020 and April 26, 2020 (as compared to February 15, 2020) shall not reduce the amount of loan forgiveness IF by the end of the covered period the borrower eliminates the reduction in employees or reduction in wages.
 - How to Request Loan Forgiveness?
 - Submit a request to the lender that is servicing the loan.
 - NOTE – Loans can be sold, so this may not be the bank that you received the loan from
 - In request:
 - Verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations.
 - Certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments.
 - The lender must make a decision on the forgiveness within 60 days.
- *The SBA will issue additional guidance on loan forgiveness*

Paycheck Protection Program: Application

- Loan Application
 - Sample application available – <https://www.sba.gov/document/sba-form--paycheck-protection-program-borrower-application-form>
 - Payroll documentation (i.e. tax documentation identical to what was submitted to IRS)
 - Purpose of loan (payroll, rent, utilities, other)
 - Owners of more than 20% of business
 - E-signatures are accepted

Paycheck Protection Program
Application Form

OMB Control No: 3245-0407
Expiration Date: 09/30/2020

<input type="checkbox"/> Non-Profit <input type="checkbox"/> Vet Org <input type="checkbox"/> Tribal <input type="checkbox"/> Ind. Cont. <input type="checkbox"/> Self Employed		DBA or Tradename if applicable	
Business Legal Name			
Business Primary Address		Business TIN (EIN/SSN)	Business Phone
		() -	
		Primary Contact	Email Address

Average Monthly Payroll:	\$	X 2.5 equals Loan Amount:	\$	Number of Jobs:	
Purpose of the loan (select more than one):					
<input type="checkbox"/> Payroll <input type="checkbox"/> Rent / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain):					

Applicant Ownership

List all owners of Applicant with greater than 20% ownership stakes. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN/SSN)	Address

(Questions 11 or 12 below are answered "Yes" - the loan will not be approved.)

Question	Yes	No
1. Is the Business or any owner presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Business, any of its owners, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Business or any owner an owner of any other business or have common management with any other business? If yes, attach a listing of all Affiliates and describe the relationship as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Business received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

Applicants who are individuals and all 20% or greater owners of the business must answer the following questions. If questions (5) or (6) are answered "Yes" or question (7) is answered "No", the loan will not be approved.

Question	Yes	No
5. Are you presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, on probation or parole? <div style="text-align: right; font-size: x-small;">Initial here to confirm your response to question 5 --></div>	<input type="checkbox"/>	<input type="checkbox"/>
6. Within the last 7 years, for any felony or misdemeanor for a crime against a minor, have you: 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)? <div style="text-align: right; font-size: x-small;">Initial here to confirm your response to question 6 --></div>	<input type="checkbox"/>	<input type="checkbox"/>
7. <input type="checkbox"/> I am a U.S. Citizen OR , <input type="checkbox"/> I have Lawful Permanent Resident status <input type="checkbox"/> No <div style="text-align: right; font-size: x-small;">Initial here to confirm your response to question 7 --></div>	<input type="checkbox"/>	<input type="checkbox"/>

Paycheck Protection Program: Certifications

- The applicant was in operation on February 15, 2020, and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.
- Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.
- The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, and that the applicant understands that if the funds are knowingly used for unauthorized purposes, the federal government may hold the applicant legally liable such as for charges of fraud.
- Documentation verifying the number of FTE employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan will be provided to the lender.
- The applicant is eligible for a PPP loan.



Questions & Answers

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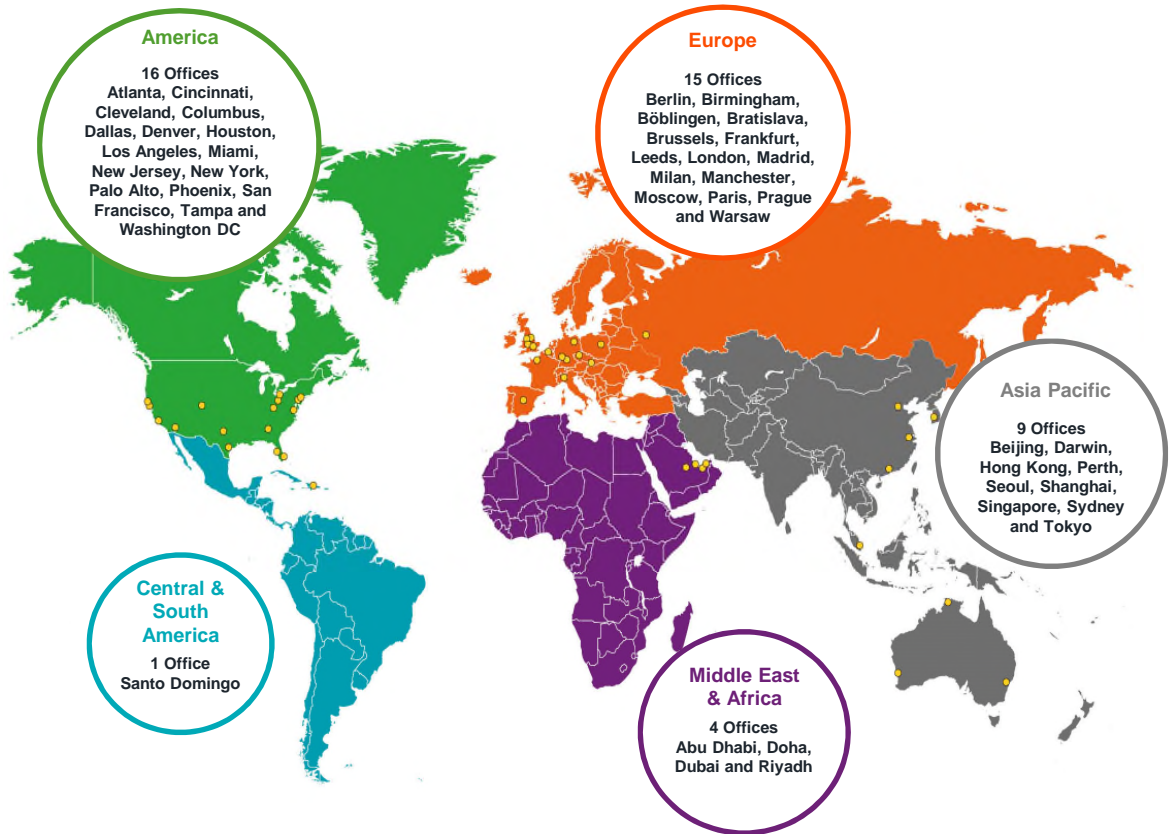
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