



## How Does the New Paycheck Protection Program Law Impact Nonprofits? Updated January 9, 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.
- New loans and Second Draw Loans may be obtained through **March 31, 2021** subject to the availability of funds.

The SBA released two interim final rules on January 6 and the [Second Draw Loan application form](#) on January 8 with the goal of beginning to accept applications via lenders the week of January 11<sup>th</sup>. While additional rules and new forgiveness applications are being developed, 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.

#### 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 must issue in January<sup>1</sup>. While the law simplified the forgiveness process, it does not clearly state whether FTE and wage-reduction penalties are eliminated for loans of this size. We are awaiting rules and application materials from the SBA which we hope will clarify this.
- **The borrower is still required to attest to compliance with the PPP requirements and maintain back up records.** However, the document retention requirements are less onerous, with

This information is provided for general informational and educational purposes only and does not constitute legal, accounting or financial advice. Please note guidance is changing regularly. We encourage you to check with the SBA and your lender for updated guidance, check our FMA toolkit for updated materials and consult your legal and accounting professionals, as needed.

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”<sup>ii</sup>. 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 issues January 6<sup>th</sup>).

### Changes to the Forgiveness Process

- 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 appears to be retroactive as well as prospective, but we are watching for clarity from the SBA. If it is, then Borrowers who need past December 31 to reach 24 weeks could achieve this. (Section 306)

### 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.

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

Here’s what we know so far about Second Draw Loans from the text of the new law, the [Interim Final Rule](#) released on January 6<sup>th</sup>, an [overview from the SBA](#), and the [Second Draw Loan Application form](#). The SBA announced that community financial institutions would be able to accept applications for Second Draw Loans as early as January 13<sup>th</sup> and then PPP will open for all participating lenders shortly thereafter.

### 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. We are awaiting details on how you will prove you finished spending your first loan.

This information is provided for general informational and educational purposes only and does not constitute legal, accounting or financial advice. Please note guidance is changing regularly. We encourage you to check with the SBA and your lender for updated guidance, check our FMA toolkit for updated materials and consult your legal and accounting professionals, as needed.

### 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. We know this is of particular significance to nonprofits, so we are providing some initial guidance here and will provide more details if we see any additional guidelines released by the SBA:
  - Gross Receipts is based on the [accounting method that the organization already has in place](#) - so either accrual or cash. For example, if an organization accrued \$50,000 in gross receipts in Q1 2020 but had \$100,000 in Q1 2019, that would be a larger than 25% reduction in receipts.
  - Consider [consulting your auditor, accountant and/or 990 preparer](#) regarding how 990-related rules apply to your organization.
  - For nonprofits which follow accrual-based GAAP accounting standards, [conditional contracts and grants](#), typical of government and some foundation funding, are **not includable in gross receipts until the conditions are satisfied**.
  - The [2020 PPP loan amount is not included](#) in gross receipts.
  - While applications can compare [all of 2020 to 2019](#) to calculate the drop in revenue (instead of just looking quarterly), they can only do so if they have [tax records](#) to back this up, which for nonprofits would mean filed 990s. This probably will not work for many nonprofits given the timing of this new loan program.
  - Despite the more streamlined forgiveness process for small loans of \$150k or less, borrowers at this size are still be required to [provide proof of a 25% or greater drop in gross receipts](#) no later than at the time of application for forgiveness. All others must provide the proof at time of loan application.

### 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.
- **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.

This information is provided for general informational and educational purposes only and does not constitute legal, accounting or financial advice. Please note guidance is changing regularly. We encourage you to check with the SBA and your lender for updated guidance, check our FMA toolkit for updated materials and consult your legal and accounting professionals, as needed.

### 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.

### Special Caution: If the *combined* total of all loans exceed \$2M, the loans may be subject to audit and deeper loan necessity scrutiny.

- We believe that if the total amount of a Borrower's original loan and Second Draw Loan exceed \$2 million, the loan may be subject to the automatic audit requirement of the PPP rules including needing to provide comprehensive proof of loan necessity. We are awaiting further guidance from the SBA on if this will be the case.

### 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.<sup>iii</sup> 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.

This information is provided for general informational and educational purposes only and does not constitute legal, accounting or financial advice. Please note guidance is changing regularly. We encourage you to check with the SBA and your lender for updated guidance, check our FMA toolkit for updated materials and consult your legal and accounting professionals, as needed.

### 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.

---

<sup>i</sup> The new PPP law provides that the forgiveness application for loans of \$150k or less will require the borrower to provide: i) the number of employees the borrower was able to retain, ii) an estimate of the amount of the PPP loan spent on payroll and iii) total loan value. The borrower is not required to submit any documentation (However, see below regarding proof of drop in revenue requirements for Second Draw Loans)

<sup>ii</sup> New allowable expenses include:

- **“Covered Operations”** – intended to cover business software or could 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)

<sup>iii</sup> 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.

This information is provided for general informational and educational purposes only and does not constitute legal, accounting or financial advice. Please note guidance is changing regularly. We encourage you to check with the SBA and your lender for updated guidance, check our FMA toolkit for updated materials and consult your legal and accounting professionals, as needed.