

A detailed, grayscale microscopic image of a coronavirus particle, showing its characteristic spherical shape and numerous spike-like projections (glycoprotein spikes) extending from its surface. The particle is centered in the upper half of the frame, with another, slightly out-of-focus particle visible in the background to the left.

COVID-19: SBA PPP Loans – Return Of The Paycheck Protection Program (PPP2)

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January 7, 2021

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Agenda

- Eligibility
- Maximum Loan Calculations
- Covered Expenses
- Change in Tax Rules
- Timing and Next Steps
- Other PPP Updates
 - ✓ Simplified Forgiveness for Loans Under \$150,000
 - ✓ Audit Information
 - ✓ Employee Retention Tax Credit and PPP
 - ✓ EIDL and debt relief program update



Breaking News

- Two new IFRs released
- [PPP as Amended by Economic Aid Act](#)
 - ✓ Restates existing regulatory provisions for borrowers and lenders
- [Second Draw Loans](#)
 - ✓ Implements the key provisions of the Economic Aid Act
- Economic Aid Act overrides any conflicting guidance in the FAQs
 - ✓ SBA to update FAQs in process



Basics of the Legislation



- Round 1 of PPP (PPP1) closed in August 2020
- New legislation allows for Round 2 of PPP (PPP2)
- \$275 billion of funding plus the ability to repurpose the \$138 billion of unused PPP1 funds
- Total potential for \$400+ billion in funds
- Wave 1 of PPP1 = \$350 billion for context. Went in 2 weeks time, but there was little to do in order to qualify
- Amendment to the CARES and Flexibility Act; not a brand new program
- Closes March 31, 2021

Eligibility - Necessity

- **We believe that necessity will still be a factor**
 - Necessity issue brought about much discussion about giving back loans and what “need” meant – [GBQ Article](#)
 - Certify in good faith that the loan request is necessary “Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant”
 - Prior Treasury guidance was that loans under \$2 million would be presumed to meet the necessity criteria – [GBQ Article](#)
 - Raises questions:
 - ? PPP1 = \$1.2 million, PPP2 = \$1 million. Neither is above \$2 million, but collectively they are?
 - ? All loans this round are capped at \$2 million – will they “lower the bar” for presumed necessity?

Eligibility – PPP2 Requirements

Criteria	Comments
<p>Must have been in business as of February 15, 2020 (evidenced by payroll data)</p>	<ul style="list-style-type: none"> • If the business was not in business in 2019, but was in business by February 15, 2020, special rules for what quarters to compare for the 25% reduction
<p>25% reduction of gross receipts in any one quarter in 2020 vs. the same quarter in 2019, <u>OR</u></p> <p>If in operation for all 2019, can show a reduction in annual receipts of 25% or greater in 2020 compared to 2019 (submit tax returns)</p>	<ul style="list-style-type: none"> • If the business was not in business in 2019, but open by February 15, 2020, then the business can compare Q2, Q3 or Q4 to Q1 of 2020 for the 25% test • Gross receipts specifically excludes any amounts received under the CARES Act, which would include PPP1 • Appears to be calendar quarters
<p>Added 501(c)6 organizations as eligible</p>	<ul style="list-style-type: none"> • So long as not more than 15% of the organization's revenues are related to federal lobbying

Eligibility – PPP2 Requirements

Criteria	Comments
No more than 300 employees or meets an alternative size standard	<ul style="list-style-type: none">• This is headcount, similar to the prior SBA guidance and not FTEs• We believe the affiliation rules would still be in place that require you to look across all affiliates for the 300 employee test• Similar to PPP1, on multi-location business (i.e. restaurants, gyms, hotels) the business can be eligible based on having less than 300 employees per location
Additional Restrictions	<ul style="list-style-type: none">• Lobbying firms and think tanks• Companies owned by or created under laws or board member from People's Republic of China or Special Administrative Region of Hong Kong• Received grant under Shuttered Venues Operators program

Eligibility Questions

It would not be PPP if we didn't have some unknowns and questions!

- **Basis of accounting** for measuring the 25% decline (cash vs accrual) – “received or accrued in accordance with the entity’s accounting method”.
- **Multiple Companies** – Some qualify, others do not, how will this be viewed?
 - ✓ Company 1 – No decline, increase YOY of 25%
 - ✓ Company 2 – Significant decline in Q1 and Q2 that meet the criteria
 - ✓ Company 3 – best year ever
 - ✓ Collective the 3 companies are up over 30% YOY in revenues and profits? Their operations are inter-related?
- Bad Q1 and Q2, but **rebounded** in Q3 or Q4? How does that play into the necessity question?

Continue to remember these are public dollars, subject to public record requests and optics may be important.

Eligibility Questions

Must have used, or will use, the full amount of PPP1 loan on or before the expected date of PPP2 being disbursed to borrower.

Ability to reapply or request an increase in PPP loan amount:

- If you returned all of your PPP1 loan, borrower may reapply in an amount the borrower is eligible for under current PPP rules.
- If you returned a portion of your PPP1 loan, borrower may reapply for an amount equal to the difference between amount retained and amount previously approved.
- If you only accepted a portion of the amount approved for PPP1, borrower may request an increase in the amount of the PPP loan up to the amount previously approved.

Maximum Loan Calculation

- Maximum Loan Amount
 - Greater of 2.5x average total monthly payroll or 3.5x for NAICS 72 companies **OR**
 - \$2 million (no loans over \$2 million)
- Average Total Monthly Payroll
 - Option 1 – 1 year period before the date on which the loan is made. If applying in February 2021, you can use February 2020 – January 2021
 - Option 2 – Calendar year 2019
 - Option 3 – Calendar year 2020
 - Seasonal employers and new entities there are alternative calculations similar to PPP1

Note – expanded definition of health insurance (described later) to make the maximum loan calculation might make your loan slightly different than prior even if you use 2019 figures.

Maximum Loan Calculation

- Expect most companies will use 2019 unless that was a start up year, assuming that their performance is down in 2020; however, it should certainly be analyzed. Further, there is an ease with submitting 2019 – the calculation is already done and documents pulled together from round 1
- Qualify for NAICS?
 - No information on how a business qualifies for NAICS 72 or “prove” it – does it have to be on tax return or can a business demonstrate it with operations? Consider a business who changed over time but the tax return didn’t change the NAICS, for example.
- Health Insurance
 - Expanded definition of health insurance (described later) to make the maximum loan calculation might make your loan slightly different than prior even if you use 2019 figures.

Expanded Covered Expenses

Covered Expenses	Definition/Comments
Payroll Expenses	<ul style="list-style-type: none">• Same as PPP1 (gross payroll, employer cost of group health insurance and employer cost of state taxes) subject to owner restrictions on PPP1 with expanded definition of health insurance to include:<ul style="list-style-type: none">○ Group life○ Disability○ Vision and dental
PPP1 Non Payroll Expenses	<ul style="list-style-type: none">• Includes the same non payroll as in PPP1 – rent, utilities, mortgage interest and transportation costs (subject to all definitions and restrictions on PPP1)
New Operations Expenditures	<ul style="list-style-type: none">• Payment for any <u>business software or cloud 9 computing service</u> 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

Expanded Covered Expenses

Covered Expenses	Definition/Comments
Property Damage Costs	<ul style="list-style-type: none">• Related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation
Supplier Costs	<ul style="list-style-type: none">• Expenditure made by an entity to a supplier of goods for the supply of goods that:<ul style="list-style-type: none">○ are essential to the operations of the entity at the time at which the expenditure is made; and○ is made <u>pursuant to a contract, order, or purchase order</u> –<ul style="list-style-type: none">• in effect at any time <u>before the covered period</u> with respect to the applicable covered loan; or• with respect to perishable goods, in effect <u>before or at any time during the covered period</u> with respect to the applicable covered loan <p><i>*Anticipate a requirement to provide a contract, order or purchase order that meets these criteria for forgiveness</i></p>

Expanded Covered Expenses

Covered Expenses	Definition/Comments
Worker Protection Expenditures	<ul style="list-style-type: none">• Operating or capital expenditure to adapt the business to comply with requirements/guidance (state or federal) for sanitation, social distancing, or worker/customer safety requirement. It <u>may include (not all inclusive)</u>:<ul style="list-style-type: none">○ Assets that create or expand<ul style="list-style-type: none">• A drive-through window• Indoor, outdoor or combined air ventilation or filtration system• Physical barriers (i.e. sneeze guards)• Expansion of indoor or outdoor business facility• Onsite or offsite health screening capability or• <u>Other assets relating to compliance as described above (catch-all)</u>○ Purchase of filtering face piece respirators and other kinds of <u>personal protective equipment</u>• Does <u>NOT</u> include residential real property or intangible property

Expanded Covered Expenses

- Additional categories are **retroactive** and provides some additional flexibility for both PPP1 and PPP2
 - If a borrower in PPP1 did not have sufficient expenses to achieve full forgiveness due to shut down, they may be able to go back and include some of the additional categories
- 60/40 Rule still applies
 - 60% of covered expenses related to payroll costs required for forgiveness is still in place
- Covered Period
 - Choose from an 8 week or 24 week period for the covered period from the origination (funding)
 - Allowance for a 24 week period at the front end of the loan will allow for borrowers to be more strategic than PPP1

NAICS 72



- Additional perks for those in the restaurant, lodging, food services or similar:
 - 3.5 times average payroll instead of 2.5
 - Big question is how the \$2M max loan cap applies
 - 300 employees is measured by location
 - Affiliation rules do not apply consistent with PPP1

Timing

- SBA has 10 days after the date of enactment to issue regulations (counting business days, that appears to be January 12th) – IFRs issued January 6th
- Hearing that the SBA has told banks anywhere from 2 weeks to 30 days to open the program
- Because of the tightened criteria, it may not be as big of a “run on the bank” as PPP1. We would still recommend using this time to get ready and be poised to file



Next Steps?

- Last day to apply is March 31, 2021
- Determine if you qualify?
- If you do:
 - What payroll period will be better – trailing 12 months, 2020 or 2019?
 - Do you average monthly payroll calculation or update your 2019 calculation if the definition of health insurance will change the amount?
 - Begin gathering documents to support your average monthly payroll amount
 - Using 2019 payroll data with same lender, no additional documentation required (unless revising for insurance costs)
 - PPP2 loan > \$150K: proof of gross receipts decline at application date
 - PPP2 loan < \$150K: proof of gross receipts decline no later than date of forgiveness application
 - Acceptable gross receipts decline evidence – tax forms, quarterly financial statements, bank statements

Next Steps?

- Is your first PPP1 loan under review by the SBA?
 - Ability to apply for PPP2 still exists
 - PPP2 disbursement could be held up because of SBA review of eligibility for PPP1
 - Will not receive a SBA loan until issue resolved
 - Does not disqualify the borrower
 - SBA to set aside available appropriations to fund PPP@ loans applied for by unresolved borrowers in the event they are approved
- Contact your lending institution to determine if they are participating in PPP2
 - We have heard that some institutions are not or if they are, have restrictions such as you must have received a PPP1 from them to get a PPP2

The top portion of the slide features a grayscale photograph of the United States flag waving on the left, with the dome of the United States Capitol building visible in the background on the right. Below the photograph is a solid green horizontal bar.

Taxability of PPP1 and PPP2

Deductibility of Expenses

- How it started.....not so great
 - Under the CARES Act, the debt forgiveness was not taxable income. However, expenses paid with non-taxable income are not deductible for tax purposes. The IRS made it clear taxpayers with any reasonable expectation of forgiveness would not be allowed to deduct expenses.
- How it is going....much better!
 - Taxpayers will be able to deduct expenses paid with PPP loans on their returns. The bill reverses the IRS position that no tax deduction would be allowed.
 - Tax payers were facing large tax bills prior to this change and many can now breathe a sigh of relief!

***Be sure to get with your
tax advisors on Q4 estimates!***



A black and white photograph of a businessman in a suit and tie, holding a magnifying glass over a folder of papers. The image is partially obscured by a green horizontal bar at the bottom.

Other Provisions of Interest

Loans Under \$150,000

- Simplified process and form for loans under \$150,000
- Treasury has 24 days to release the new streamlined application – when banks open up forgiveness; however, it will be up to the individual bank
- New form:
 - Signs and submits to the lender a certification which, shall not be more than 1 page in length and
 - Requires only that the recipient provide:
 - Description of the number of employees the borrower was able to retain because of the covered loan
 - The estimated amount of the covered loan amount spent by the borrower on payroll costs
 - The total loan value
 - Attests that the borrower has accurately provided certification and complied with PPP requirements, as well as, has maintained appropriate records.

SBA Audit Plans

- Requires the SBA to provide transparency on the audit process
 - A big relief for those with loans over \$2 million
- 45 days after the enactment of the legislation – SBA is to submit an audit plan that details
 - Policies and procedures of the SBA for conducting forgiveness reviews and audits and
 - The metrics that the SBA shall use to determine which covered loans will be audited
- Ongoing reporting obligations as well
 - Number of active reviews and audits
 - Number of reviews and audits ongoing more than 60 days and
 - Any substantial changes made to the audit plan previously submitted

For those who are concerned about the audit process, we would recommend perhaps waiting for the report to gain some insight.

Expansion of the Employee Retention Credit

- For calendar year 2020 eligibility generally did not change
 - Eligible employer has to have either
 - operations that were fully or partially suspended during any calendar quarter in 2020 due to a government order or
 - experienced a 50% or greater decline in gross receipts during a calendar quarter in 2020 as compared to the same quarter in 2019
- For the first two quarters of 2021, the 50% receipts decline is reduced to a 20% decline
- Revised rules for 2021 also provide a safe harbor that allows employers to use prior-quarter receipts to determine eligibility

Expansion of the Employee Retention Credit

- Originally part of the CARES Act – refundable tax credit against an employer’s share of FICA taxes
- Revised who may claim ERC for the period after March 12, 2020 and before January 1, 2021
- Extends the ERC from January 1, 2021 through June 30, 2021 with modifications
- Retroactive to the effective date of the CARES Act – provides that employers who received PPP loans may still qualify for the ERC **with respect to wages not paid by PPP proceeds**
 - ***May be a strategic decision as to what to submit for forgiveness expenses. Payroll only vs. payroll at 60% + other expenses.***
- Sara Goldhardt – sgoldhardt@gbq.com if you have questions or need assistance with the ERC

EIDL Program Updates

- EIDL emergency grants of up to \$10,000 are now tax-free and will not reduce PPP loan forgiveness
- New round of EIDL loan advances of \$20B, not to exceed \$10,000 per borrower
- EIDL Program [Recap](#) and [FAQ](#)
 - Eligibility: Generally businesses with less than 500 employees (affiliation rules apply)
 - Purpose: Meet financial obligations and operating expenses that could not be met due to COVID
 - Interest: 3.75% for businesses (2.75% for nonprofits)
 - Term: 30 years
 - No prepayment penalties or fees
 - Use of proceeds: working capital & normal operating expenses
 - Collateral: Required for loans over \$25K
 - Payments: Deferred 1 year; interest still accrues
 - Personal guarantee: Loans exceeding \$200K

Extension of Debt Relief Program

- Resumes the payment of principal and interest (P&I) on small business loans guaranteed by the SBA under the 7(a), 504 and Microloan programs.
- Borrowers with qualifying loans approved by the SBA prior to the CARES Act will receive an additional three months of P&I, starting in February 2021.
- Going forward, payments will be capped at \$9,000 per borrower per month.
- After the three-month period noted above, the smallest and hardest hit by the pandemic will receive an additional five months of P&I payments (capped at \$9,000 per borrower per month).
- SBA payments on P&I on the first six months of newly approved loans will resume for all new loans approved between February 1 and September 30, 2021, also capped at \$9,000 per month.

Questions



Additional Resources

- [Extension/Expansion of Employee Retention Tax Credit](#) (**NEW** – 12/29/20)
- [Return Of The Paycheck Protection Program \(PPP2\) – GBQ's Comprehensive Guide](#) (**UPDATED** – 12/23/20)
- [Exploring The Major Tax Provisions In The Emergency Coronavirus Relief Act](#) (12/22/20)
- [Deal Reach On \\$900 Billion Relief Bill \(And The Impending Return Of PPP\)](#) (12/21/20)
- [SBA PPP FAQ #53 Regarding Loan Necessity Questionnaire Forms 3509 and 3510](#) (12/14/20)



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