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Paycheck Protection Program begins winding down

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The Paycheck Protection Program (PPP) closed to new applications on May 31, 2021, but lenders approved by the Small Business Administration (SBA) have until [July 30](#) to process already-submitted loan applications. First created by the Coronavirus Aid, Relief and Economic Security (CARES) Act ([Pub. L. No. 116-136](#)) in March 2020, PPP offers COVID-19 aid in the form of forgivable loans to help small employers retain workers and cover other allowable expenses. By the end of May 2021, lenders had approved over 11.8 million loans totaling nearly \$800 billion. Nearly 6.7 million loans have been approved in 2021 alone, and 3.3 million of the 5.2 million loans issued in 2020 had been forgiven by May 24, 2021. The SBA has thousands more forgiveness requests pending, and millions more will likely follow. PPP loan recipients that haven't yet applied to have their loans forgiven should consider reviewing the latest [SBA](#) and [Treasury Department](#) guidance on the topic.

PPP in brief

Created by the CARES Act in 2020, the nearly \$7 billion PPP aims to help small employers stay in business and keep workers on payroll, despite closing or reducing business operations to contain the COVID-19 pandemic. Small businesses using PPP funds for select expenses like wages, rent and utilities can have their loans forgiven. Loans that do not qualify for forgiveness are subject to interest with a statutory 4% cap. Later legislation infused more money into the program, created a second draw loan, expanded the loan period and broadened eligibility for select industries.

PPP extensions and expansions

The program initially targeted only employers with 500 or fewer employees (unless an industry-specific workforce size applied), including sole proprietors, independent contractors and self-employed individuals. Employers in the hotel and restaurant industries could apply if they had 500 or fewer employees in a particular location, and a special rule covered franchises. The first loans were available for expenses incurred between Feb. 15 and June 30, 2020, and could be forgiven if used for wages, benefits, taxes, mortgage interest or rent, and utilities.

As the pandemic continued through 2020 into 2021, Congress extended and broadened the program:

- The PPP and Health Care Enhancement Act ([Pub. L. No. 116-139](#)) provided additional funding.
- The PPP Flexibility Act ([Pub. L. No. 116-142](#)) liberalized some terms and conditions for loans and extended the covered period to Dec. 31, 2020.
- A third act, [Pub. L. No. 116-147](#), extended the June 30 loan application deadline to Aug. 8, 2020.
- The Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (the Economic Aid Act) within the Consolidated Appropriations Act of 2021 ([Div. N, Title III of Pub. L. No. 116-260](#)) significantly modified the PPP. The Economic Aid Act added funds, increased flexibility, expanded eligible borrowers, provided for second loans, simplified the loan forgiveness process and made PPP expenditures tax-deductible. With additional funding of \$284.45 billion, a second round of PPP loans became available from Jan. 1 through March 31, 2021.
- The PPP again received a new infusion of more than \$7 billion from the American Rescue Plan Act (ARPA) ([Title V of Pub. L. No. 117-2](#)), which also expanded eligibility to internet news companies and more nonprofits.
- The PPP Extension Act of 2021 ([Pub. L. No. 117-6](#)) extended the program from March 31 to June 30, with a May 31 application deadline.

Eligibility expansion

Economic Aid Act changes

The Economic Aid Act expanded eligibility for PPP loans to certain news organizations, housing cooperatives, Internal Revenue Code (IRC) Section 501(c)(6) not-for-profit organizations and destination marketing organizations:

- **News organizations** include newspapers and individual news stations with 500 or fewer employees in a particular location, as well as public broadcasting stations of any size.
- **Housing cooperatives** as defined by IRC Section 216(b) could employ no more than 300 workers.
- **501(c)(6) nonprofits** include business leagues, chambers of commerce, real estate boards and boards of trade with 300 or fewer employees but excluded professional sports leagues or political campaign organizations.
- **Destination marketing organizations** include nonprofits and state or local governments that promote tourism and nonprofits that promote live events, provided these entities have no more than 300 employees.

Both 501(c)(6) and destination marketing organizations whose lobbying activities exceeded certain thresholds are ineligible for PPP loans.

Shuttered venue operators. Eligibility limitations imposed by the Economic Aid Act exclude businesses that weren't in operation on Feb. 15, 2020, and entities that receive [shuttered venue operators \(SVO\) grants](#). The CAA established this program within the SBA to provide up to \$16 billion to live venue operators and promoters, theaters, performing arts organizations, museums, movie theaters that meet certain requirements. For example,

SVO grant applicants had to be operating before Feb. 29, 2020, and had to have at least a 25% reduction in revenues during a quarter in 2020 compared with the same quarter in 2019. The program prioritizes venues experiencing severe revenue declines.

ARPA changes

PPP loan and SVO grant coordination. ARPA changes allowed businesses to receive both a SVO grant and a PPP loan under certain conditions. Although businesses that had already received a SVO grant couldn't get a PPP loan in 2021, businesses that had received a PPP loan first could also receive a SVO grant. The PPP loan amount would be deducted from the SVO grant. Grants were not reduced by PPP loans received in 2020.

Other eligibility changes. ARPA expanded PPP eligibility in several other ways, including by opening the program up to certain internet-only news publishers, additional tax-exempt groups, and larger nonprofit organizations and by extending second PPP loans to certain accommodation and food service businesses:

- **Internet-only news and periodical publishers** assigned [NAICS Code 519130](#) with no more than 300 employees per location could access a PPP loan to support local or regional news efforts.
- **Additional [501\(c\) groups](#)** (other than those under 501(c)(3), (4), (6) or (19)) exempt from tax under Section 501(a) — including labor organizations, social and recreation clubs, fraternal benefit societies, and religious educational groups — could receive a PPP loan if they employed no more than 300 employees per location and their lobbying activities complied with legal limits.
- **Large nonprofit organizations** — 501(c)(3) organizations and 501(c)(19) veterans' organizations — could obtain a PPP loan if they employed no more than 500 employees per physical location. These entities previously had to meet the SBA's size standards for the relevant industry and certain restrictions on affiliated entities. In addition, 501(c)(6) organizations — business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues — and domestic marketing organizations could access a PPP loan if they have no more than 300 employees per physical location.
- **Accommodation and food service businesses** assigned NAICS codes beginning with [72](#) could receive a second PPP loan if they employed no more than 300 employees per physical location, met the PPP's year-to-year reduced quarterly revenue threshold and otherwise satisfied the eligibility criteria.

For detailed guidance, including Q&As on the PPP amendments made by the Economic Aid Act and ARPA, see the SBA's interim final rules published on [Jan. 14](#) and [March 22](#), 2021, respectively.

Allowable expenses

Payroll costs. PPP participants may have their loans forgiven if at least 60% goes to pay any of the following payroll costs:

- Wages, salary, commissions or tips (up to \$100,000 on an annualized basis for each employee)
- Health, retirement or paid leave benefits
- State or local payroll taxes

The 2021 CAA clarifies that borrowers can treat group dental, vision, life and disability benefit costs, including premium payments — in addition to group health benefit costs — as payroll costs. However, amounts eligible for PPP loan forgiveness must exclude any wages used to determine the CARES Act's [employee retention credit](#) or the disaster credit of [Section 303](#) of the CAA's [Taxpayer Certainty and Disaster Tax Relief Act](#), and any COBRA premium costs used to determine the tax credit for the ARPA's [COBRA subsidy](#).

Other costs. Other allowable expenses include mortgage interest, rent and/or utility payments. The Economic Aid Act added the following eligible nonpayroll uses:

- **Covered operations expenditures**, such as business software and cloud computing
- **Covered property damage costs** related to vandalism or looting during public disturbances in 2020 (if not otherwise covered by insurance or other compensation)
- **Covered supplier costs**, including certain essential supplies
- **Covered worker protection expenditures**, including personal protective equipment (PPE) and other investments (operating or capital) to increase safety during the COVID-19 pandemic

Covered period. Amendments made by the CAA let borrowers choose the covered period — anywhere between eight and 24 weeks after the loan origination — for spending PPP funds. The PPP previously gave borrowers either 8 or 24 weeks to spend loans on expenses incurred until Dec. 31, 2020. The Economic Aid Act extended the lending and forgiveness periods until March 31, 2021, then PPP Extension Act of 2021 again extended those periods until May 31, 2021.

Loan forgiveness

Requirements for forgiveness. Borrowers can have their loan forgiven if they spend at least 60% on payroll and the remainder on eligible nonpayroll costs. Payroll costs must be incurred or paid during the covered period to qualify for forgiveness. Nonpayroll costs must be either paid or incurred during the covered period and paid on or before the next regular billing date, even if that date is after the covered period.

Amount forgiven. The maximum amount forgiven can equal the full principal amount of the loan plus interest. The actual amount forgiven will depend, in part, on the total amount spent during the covered period. Borrowers can receive forgiveness for the nonpayroll costs added by the Economic Aid Act only if the loan hadn't yet been forgiven when the amendments went into effect (Dec. 27, 2020).

Reduced loan forgiveness for lower staffing/wages. The loan amount forgiven generally is reduced if the borrower reduces the number of full-time employees or the wages or salaries paid to employees. However, this rule has many exceptions. For example, no reduction in loan forgiveness occurs if the employer reversed the decrease in full-time staff or wages by Dec. 31, 2020 — or for loans received in 2021, by the last day of the covered period. Other exceptions are based on employee availability, business activity, voluntary separations and terminations for good cause, and loans of \$50,000 or less. For detailed guidance with Q&As, see the [SBA interim final rule](#) published on Feb. 5, 2021.

Repayment of unforgiven amounts. Loans mature in five years, and according to [Treasury regulations](#), amounts not forgiven are subject to a 1% (noncompounding, nonadjustable) interest rate.

Second loan

The Economic Aid Act made a second PPP loan — sometimes referred to as a second draw — possible for some entities that had already spent all of their first PPP loan on eligible expenses. However, only entities with 300 or fewer employees could receive a second loan, whereas some entities with up to 500 employees were eligible for first loans. Employers seeking a second loan needed to show economic hardship. In contrast, the CARES Act's original PPP terms only required borrowers to certify that the economic uncertainty made the loan request necessary to support ongoing operations. As with first loans, second loans are forgiven if the borrower spends at least 60% on eligible payroll expenses.

Smaller loan amount. Borrowers generally could receive second loans of up to 2.5 times average monthly payroll costs, but capped at \$2 million, as opposed to the \$10 million cap for first loans. However, employers in the restaurant and hotel industry could receive loans up to 3.5 times payroll costs and remained exempt from the SBA's affiliation rules. The Economic Aid Act also simplified calculations and documentation requirements for determining any borrower's payroll costs and created special calculations for seasonal businesses.

Select industries excluded. Businesses ineligible for second loans included publicly traded companies, lobbying organizations, and companies with significant ties to China or Hong Kong or with Chinese residents as board members. The Economic Aid Act also excluded businesses ineligible for Small Business Act loans under [13 CFR § 120.111](#), unless they are eligible under a different provision. This exclusion could apply to banks and other finance companies, life insurance companies, casinos, and private clubs, among others.

For detailed guidance on second loans, see the SBA's [interim final rule](#) published on Jan. 14, 2021.

Increases to first loan permitted. Eligible entities with PPP loans that had not been forgiven before enactment of the Economic Aid Act could request an increase in their loan amount to take advantage of program changes. In particular, these entities could receive funds reflecting the original calculation or update the calculation to reflect the maximum amount for which they were eligible.

Tax relief for loan recipients

The Economic Aid Act clarified that loan recipients do not need to include forgiven PPP loan amounts in gross income or reduce their tax basis or any other tax attributes to reflect those amounts. The law also reversed course from previous PPP guidance (obsoleting [Notice 2020-32](#) and [Rev. Rul. 2020-27](#)) by allowing loan recipients to deduct business expenses, even if they paid those expenses using the tax-exempt PPP loan. This meant that small businesses did not have to forgo significant deductions and face a surprise tax bill if they received a PPP loan for those same business expenses. This modification applied retroactively to include PPP loans granted in 2020. Guidance is available in [Rev. Rul. 2021-20](#) and [Rev. Proc. 2021-20](#).

The CARES Act ([Sec. 2302\(a\)\(1\)](#) and (2)) allows loan recipients to defer payroll tax deposits. As provided by a [presidential memorandum](#) and later guidance ([Notice 2020-65](#)), employers could defer withholding employees' share of Social Security payroll taxes for the last four months of 2020, then make up and pay back those deferral through increased withholding for the first four months of 2021. The Economic Aid Act extended the repayment period through Dec. 31, 2021. However, consistent with prior guidance, payroll costs treated as qualified wages in determining the CARES Act's employer retention credit are not eligible for PPP loan forgiveness.

Next steps

Although the deadline to apply for PPP loans has closed, lenders approved by the SBA have until July 30 to finish processing applications that came in before the May 31 deadline. In addition, the SBA has thousands of forgiveness requests pending, and millions more will likely follow. PPP loan recipients that haven't yet applied for loan forgiveness should consider consulting with tax counsel and reviewing the latest PPP guidance on the [SBA](#) and [Treasury Department](#) websites.

Related resources

Non-Mercer resources

- [Paycheck Protection Program](#) (Small Business Administration, regularly updated)
- [Paycheck Protection Program](#) (Treasury Department, regularly updated)
- [Federal Reserve Board extends Paycheck Protection Program Liquidity Facility to July 30, 2021](#) (Federal Reserve, June 25, 2021)
- [Rev. Proc. 2021-20](#), Safe harbor for PPP loan recipients that did not deduct otherwise deductible 2020 expenses covered by forgiven loan (IRS, April 22, 2021)
- [PPP FAQs](#) (Treasury, April 6, 2021)
- [Notice 2021-23](#), Guidance on the employee retention credit under the CARES Act for the first and second calendar quarters of 2021 (IRS, April 2, 2021)
- [Pub. L. No. 117-6](#), the PPP Extension Act of 2021 (March 30, 2021)
- [Interim final rule on PPP as amended by ARPA](#) (Federal Register, March 22, 2021)
- [Pub. L. No. 117-2](#), the American Rescue Plan Act (March 11, 2021)
- [Interim final rule on PPP loan amount calculation and eligibility](#) (Federal Register, March 8, 2021)
- [Interim final rule on PPP loan forgiveness and loan review procedures as amended by Economic Aid Act](#) (Federal Register, Feb. 5, 2021)
- [Interim final rule on PPP second-draw loans](#) (Federal Register, Jan. 14, 2021)
- [Interim final rule on PPP as amended by Economic Aid Act](#) (Federal Register, Jan. 14, 2021)
- [Rev. Rul. 2021-20](#), Obsoleting 2020 guidance on deductible expenses paid by PPP loans (IRS, Jan. 6, 2021)
- [Pub. L. No. 116-260](#), the Consolidated Appropriations Act, 2021 (Congress, Dec. 27, 2020)
- [Pub. L. No. 116-147](#), an act to extend the PPP and for other purposes (July 4, 2020)

- [Pub. L. No. 116-142](#), the PPP Flexibility Act (Congress, June 5, 2020)
- [Pub. L. No. 116-139](#), the PPP and Health Care Enhancement Act (April 24, 2020)
- [Pub. L. No. 116-136](#), the CARES Act (Congress, March 27, 2020)

Mercer Law & Policy resources

- [Tracking federal COVID-19 laws affecting employee benefits, jobs](#) (March 30, 2021)
- [Paycheck Protection Program changes become law](#) (June 5, 2020)
- [CARES Act expands unemployment benefits, aims to stem job losses](#) (April 15, 2020)

Other Mercer resources

- [Navigating coronavirus](#) (regularly updated)

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