FAQs on First and Second Draw PPP Loans for Nonprofits*

January 11, 2021

1. What is the latest legislation enacted by Congress with regards to the Payroll Protection Program (PPP)?

After much uncertainty, the Consolidated Appropriations Act, 2021 (CAA21) was passed by Congress on December 21, 2020 and signed into law by President Donald Trump on December 27, 2020. This is the second-largest federal stimulus package approved by Congress this year following the $2 trillion CARES Act passed in March 2020. CAA21 includes significant changes to the Payroll Protection Program (PPP) as well as expansion of other lending and grant programs. A key aspect of this is an opportunity for eligible entities to obtain PPP Second Draw PPP Loans.

2. If I did not receive or returned my PPP Loan from the first round of applications, can I apply for a PPP Loan now?

Yes, Congress revived the PPP as part of the $900 billion COVID-19 relief bill that was signed into law on Dec. 27, 2020. The original PPP provided $525 billion in forgivable loans over five months before it stopped accepting applications in August. 2020. CAA21 has made $284.5 billion available for PPP Loans, including $35 billion for first-time loans and $15 billion set aside for community financial institutions.

New First Draw Applicants can use Form 2483 to apply. This can be for new or existing PPP borrowers who did not receive loan forgiveness by 12/27/20 to reapply for a First Draw PPP Loan if they previously returned some or all of their First Draw PPP Loan funds or modify their First Draw PPP Loan amount, under certain circumstances. It allows all new borrowers to use 2019 or 2020 for purposes of calculating their maximum loan amount and must have 500 or fewer employees to be eligible. The maximum loan amount is $10 million.

3. Who is Eligible for PPP Second Draw PPP Loan?

Eligibility requirements are narrower than the eligibility requirements for First Draw PPP Loans. Nonprofits and businesses that have or will use the full amount of a first PPP loan may be eligible to receive a Second Draw PPP Loan of up to $2 million. To be eligible, borrowers must also meet the following qualifications:

- They must have 300 employees or fewer.
- They must have had a 25% reduction in gross receipts in any quarter of 2020 compared to the same quarter in 2019.
- Need to certify economic necessity

Note that loan forgiveness rules like those for the First Draw PPP Loans (60% payroll cost minimum) will apply to the Second Draw PPP Loan.

*** Some of the information included in this documentation is subject to change based on ongoing interpretation of the Consolidated Appropriations Act, 2021 (CAA21) and issuance of guidance by the SBA and other government agencies.**

4. How does a nonprofit determine gross receipts?

Gross receipts for nonprofits are usually defined based on the four categories of revenue found in Form 990. This includes all revenue in whatever form received or accrued (in accordance with the entity's accounting method) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances.

- Generally, receipts are considered "total income" (or in the case of a sole proprietorship, independent contractor, or self-employed individual "gross income") plus "cost of goods sold," and excludes net capital gains or losses as these terms are defined and reported on IRS tax return forms.
- Investment income, and employee-based costs such as payroll taxes, may not be excluded from gross receipts.
- For an eligible non-profit organization gross receipts falls within the meaning of section 6033 of the Internal Revenue Code of 1986.
    - Covers the four categories in Form 990's Statement of Revenue (Part VIII): contributions, program service revenue, investment income and sales of assets, and miscellaneous.
- Any forgiveness amount of a First Draw PPP Loan that a borrower received in calendar year 2020 is excluded from a borrower's gross receipts

5. How do I apply for a Second PPP Draw Loan and what are the terms?

All PPP loans have a fixed interest rate of 1% calculated on a non-compounding, non-adjustable basis. Businesses that receive PPP Loans may also receive loans from other lenders or programs and may be able to obtain credit from other institutions. The maturity of a PPP loan is five years, with a deferral period that lasts until the loan forgiveness amount is determined. This means that until you know how much of your loan will be forgiven, you do not need to start making payments. Borrowers who fail to apply for loan forgiveness must start making loan payments within ten months of the last day of the covered period, similar to the first round of loans.

Second Draw Applicants can use Form 2483-SD, and are generally subject to the same terms, conditions and requirements as First Draw PPP Loans. Non-payroll costs have been extended to include payments for mortgage interest, rent, utilities, worker protection costs related to COVID-19, uninsured property damage costs caused by looting or vandalism during 2020, and certain supplier costs and expenses for operations.

6. How much of a loan amount is an organization eligible for on Second Draw PPP Loans?

The maximum loan amount is the lesser of $2,000,000 or 2.5 times the businesses monthly payroll costs for calendar year 2019, or the 1-year period before the date on which the loan is made.

- For borrowers assigned a NAICS code beginning with 72 at the time of disbursement, CAA21 provides that the maximum loan amount is equal to 3.5 times the average monthly payroll costs in the year prior to when the loan was received or within the calendar year.

- Seasonal employers can use 2.5 times the average monthly payroll paid or incurred for any 12-week period between February 15, 2019 and February 15, 2020.

- For a new entity that did not exist in the 1-year period before February 15, 2020, the formula calculates the average monthly payroll costs by 2.5 times for the months in 2020 the entity operated.

7. What are included in payroll costs?

Borrowers are still required to use at least 60% of the loan proceeds on payroll costs. Payroll costs include costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, insurance premiums, employee salaries, commissions, or similar compensations. CAA21 also redefined "payroll costs" to specifically include group insurance payments made on group life, disability, vision, and dental insurance.

8. What payroll costs are excluded?

During the covered period you cannot take into account wages for determining any Employee Retention Tax Credit ("ERTC", see FAQ #14) or qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020, which is a general employee retention credit for a qualified disaster.

9. What expenses are included in non-payroll costs?

Any expenses paid for with PPP loan proceeds that are forgiven will be tax-deductible. These include the following eligible forgivable non-payroll expenses:

- Mortgage Interest
- Rent on Lease, and
- Utilities, which include:
    - water & sewer
    - electricity
    - telephone (including cell phone)
    - internet
    - gas
    - transportation

CAA21 expands the permissible use of PPP loan proceeds for which borrowers may receive forgiveness for the following:

- <u>Covered Supplier Cost</u> - generally includes amounts paid for the supply of goods that are (a) essential to the business and (b) made pursuant to a contract, order or purchased in effect before the covered period.
- <u>Covered Worker Protection Expenditures</u> - includes amounts paid to comply with COVID-19 guidance for employees working remotely and to facilitate the adaptation of business activities to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, the Occupational Safety and Health Administration or a state or local government, after March 1, 2020. These expenditures may include the purchase, maintenance or renovation of drive-through windows, air filtration systems, physical barriers (sneeze guards), expanded indoor or outdoor operating space, onsite or offsite health screening and other expenditures that are necessary. Note that payments on real estate and other intangible property are not covered under this category.

- Operations Expenditures - includes payments for any business software or cloud computing service 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.
- Property Damage Costs - related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation.

10. What should I know about changes in PPP loan forgiveness?

A major benefit of CAA21 was to streamline and simplify loan forgiveness. The new legislation expands expenses that are eligible for forgiveness (see FAQ #8) and makes applying for forgiveness even easier. For loans to be eligible for forgiveness, the funds must be used within the covered period. If you have already received a PPP loan from the first round, nothing has changed, and your covered period remains the same. Any income resulting from forgiveness is not taxable and expenses paid for with second draw funds are deductible.

Second Draw PPP Loan borrowers with a principal amount of $150,000 or less are required to provide documentation of revenue reduction if such documentation was not provided at the time of the loan application.

11. Has the covered period changed?

Yes, if you are applying for a First or Second Draw PPP loan, you may choose a covered period that is anywhere from 8 to 24 weeks after receiving the loan. This gives you the flexibility to choose a covered period that works best for you.

12. What about my EIDL advance?

The requirement that PPP borrowers deduct the amount of any EIDL advance from their PPP forgiveness amount has been repealed. If you have already filed for forgiveness on your first PPP loan, you should notify your SBA Lender on how best to modify your processed forgiveness application.

13. What forgiveness application should I use?

The SBA created several forgiveness applications. CAA21 also created a simplified forgiveness process for loans of $150,000 or less where borrowers can sign and submit to the lender a one-page certification (not available yet) that includes a description of the number of employees the borrower was able to retain because of the loan, the estimated total amount of the loan spent on payroll costs, and the total loan amount.

Below are the available applications:

- Paycheck Protection Program Loan Forgiveness Application (revised June 16, 2020)
- PPP Loan Forgiveness Application Form 3508EZ (simplified form if employer has not reduced wages by more than 25% during the covered or alternative covered period)
- PPP Loan Forgiveness Application Form 3508S (simplified form if borrowed less than $50,000)

14. What is the Employee Retention Tax Credit (ERTC)?

The Coronavirus Aid, Relief, and Economic Security (CARES) Act created a new employee retention tax credit for employers who are closed, partially closed, or experiencing significant revenue losses because of COVID-19. Section 2301 of the CARES Act provides a payroll tax credit of up to $5,000 per employee for eligible employers. The credit is equal to 50% of qualified wages paid to employees during a quarter, capped at $10,000 of qualified wages. The credit is available for wages paid from March 13 to December 31, 2020.

The CAA21 has modified the ERTC, both retroactively and prospectively, so employers that received a PPP loan can now take advantage of this credit. Employers can now obtain credits for wages paid, not only as noted above, but for the first two quarters of 2021.The 2021 credit is 70% on $10,000 in wages per quarter (or a maximum $14,000 per employee through June 30, 2021) and expands which employers are eligible.

15. Is my organization eligible to take advantage of the ERTC?

CAA21 expands which employers are eligible. Prior to the new law, the employee retention tax credit applied only to an employer who experienced a decline in gross receipts of more than 50% in a quarter compared to the same quarter in 2019. Eligibility is now expanded to include employers who experienced a decline of more than 20%.

In addition, the employee cap under which it is easier to claim the tax credit has been raised to 500 employees from 100 employees for 2021. Now, employers with 500 or fewer employees can claim the credit for wages paid to employees irrespective of whether the employee is providing services.

Prior to CAA21, your organization was eligible if it:

(i) at least partially suspended operations by a government rule during at least one quarter of 2020, or
(ii) the business experienced a 50% drop in gross receipts in any quarter of 2020 relative to the same quarter in 2019.

The CAA21 expanded the ERC in scope and applicability by

- Retroactively including PPP borrowers among the businesses that can claim the ERTC between March 12, 2020 and December 31, 2020
- Significantly reducing the quarterly gross receipts comparison in 2020 from the same quarter of 2019, from a 50% reduction to only a 20% reduction.

If qualified, businesses are entitled to a refundable tax credit (i.e., it will offsets tax liability if the business had any, otherwise the government would send a check for the value of the credit). The amount of the credit depended on the payment of "qualified wages."

16. What are qualified wages for the ERTC?

The wages that can be used to calculate the tax credit differ based on whether the employer has over or under 100 employees (500 employees in 2021).

For employers with 100 or more FTEs on average during 2019, only wages paid to employees who are not providing services qualify for the credit. But for employers with less than 100 full-time employees, all wages paid to employees, regardless of whether the employees are providing services, qualify for the credit.

Note that CAA21 has increased the 2021 threshold from 100 to 500 or fewer FTEs. So as of January 1, 2021, wages of all employees with up to 500 employees will be eligible for the ERTC even if employees are working.

Qualified wages are based on the definition of wages used for FICA taxes, plus the amount paid by the employer for health plan expenses. But the wages cannot exceed what the employee would have been paid for working an equivalent amount of time during the preceding 30 days. In other words, wage increases do not qualify for the employee retention credit. The CARES Act does not explain how this limitation should be calculated, so additional guidance will be needed.

Any federally mandated sick or childcare leave paid under the Families First Coronavirus Response Act (FFCRA) is specifically excluded from "qualified wages" for the employee retention tax credit, since employers receive a dollar-for-dollar tax credit for such paid leave wages.

17. How do I make a claim for ERTC?

Qualified employers report total qualified ERTC wages (salary and health care expenses) for each calendar quarter on their federal employment tax returns, usually Form 941, which is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's share of social security and Medicare tax. In anticipation of receiving the ERTC, qualified employers can fund qualified wages by: (1) accessing federal employment taxes, including withheld taxes that are required to be deposited with the IRS, and (2) requesting an advance of the credit from the IRS for the amount that is not funded by accessing the federal employment tax deposits, by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

Example: Employer paid $10,000 in qualified wages (including qualified health plan expenses) and is otherwise required to deposit $8,000 in federal employment taxes for all of its employees for wage payments made during the same quarter as the $10,000 in qualified wages. Employer may keep up to $5,000 of the $8,000 of taxes it was going to deposit and will later account for the $5,000 it retained when it files Form 941, Employer's Quarterly Federal Tax Return, for the quarter.

In some cases, the ERTC can result in an advance payment of the refundable tax credit.

Example: Employer paid $20,000 in qualified wages to two employees (each employee was paid $10,000 in qualified wages), and is therefore entitled to a credit of $10,000, and is otherwise required to deposit $8,000 in federal employment taxes on all wages paid. Employer can keep the entire $8,000 of taxes that it was otherwise required to deposit as a portion of the credits it is otherwise entitled to claim on the Form 941. Employer may file a request for an advance credit for the remaining $2,000 by completing Form 7200.

18. Where can I go if I need more information?

If you have any questions, please send an email to the Jewish Federations SBA Loan hotline at SBALoans@JFNA.org.