

Summary of Latest Economic Stimulus Legislation and Changes to the PPP Loan Program

Updated 1/11/21

Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues (Sections 301 – 348) of the Consolidated Appropriations Act, 2021

SBA has issued some regulations in the form of two Interim Final Rules, specifically IFR 3245-AH62 “Business Loan Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act” and IFR 3245-AH 63 “Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans” to carry out the subject legislation on 1/6/21. Complete copies of the subject IFR’s are posted on the COVID 19 resource page of the Bank’s website at www.enterprisebankpgh.com/Covid-19 .

Enactment date of the underlying law was 12/27/20, which was the date the subject legislation was signed into law by the President.

**Language taken directly from new law is in italics*

PPP Program Changes – These changes apply to both existing PPP loans not already forgiven and new PPP loans or PPP loan increases made subsequent to 12/27/20 and prior to 3/31/21, including those under the Second Draw program discussed later in this document.

Expanded Borrower Eligibility

- Non-profits under IRS Code Section 501(c)(6) are now also eligible for PPP loans provided:
 - The organization does not receive more than 15% of receipts from lobbying;
 - The lobbying activities do not comprise more than 15% of activities;
 - The cost of lobbying activities of the organization did not exceed \$1,000,000 during the most recent tax year that ended prior to February 15, 2020 and
 - The organization has 300 or fewer employees.
 - The organization is not a professional sports leagues or organization with the purpose of promoting or participating in a political campaign or other political activities
 - Prohibits any eligible entity from using proceeds of the covered loan for lobbying activities, lobbying expenditures related to state or local campaigns; and expenditures to influence the enactment of legislation, appropriations, or regulations

Additional Eligibility Exclusions

- Entities primarily engaged in lobbying
- Any business concern or entity created in or organized under the laws of the People's Republic of China or that has significant operations in China, or that has 20% or more Chinese ownership, or retains a board member who is a resident of the People's Republic of China.
- Household employers (individuals who employ nannies or housekeepers, etc.)
- Any owner of 20% or more of applicant business who is:
 - Incarcerated or subject to an indictment, arraignment or other means by which formal criminal charges are brought in any jurisdiction
 - Has been convicted of or commenced any form of parole or probation for a felony involving fraud, bribery, embezzlement, or a false statement on a loan application within the last five years; or any other felony within the last year.
- Applicant business or any business other common ownership or control with the applicant business is currently delinquent on a government loan (direct or guaranteed by SBA or any other Federal agencies), or has defaulted and caused a loss to the government in the last seven years.
- Business that have permanently closed. A business that has temporarily closed or temporarily suspended its operations but intends to reopen remains eligible.

New First Draw PPP Loans – Applicants who have NOT previously received a PPP loan are now eligible to receive their FIRST PPP loan under the following parameters:

- Applicant business must have been in operation on 2/15/20 or in the case of a seasonal business was in operation for any 12 week period between 2/15/19 and 2/15/20.
- Applicant business and its affiliates must have less than 500 employees on a combined basis, unless affiliation rules are waived as follows:
 - Business concern operating under an NAICS Code beginning with 72 (primarily accommodations and restaurants/food services)
 - Business operating as a franchise that is assigned a franchise identifier code by SBA
- Maximum loan amount is the lesser of \$10MM or the amount calculated on a payroll based formula of average monthly payroll for chosen reference period times 2.5.

- **Average monthly payroll includes:**
 - Aggregate payroll costs for employees whose principal place of residence is the United States including salary, wages, commissions, cash tips or similar compensation but subtracting any compensation paid to an employee in excess of \$100,000 on an annualized basis.
 - Payment for the provision of employee benefits consisting of group health care or group life, disability, vision or dental insurance
 - Retirement contributions made by the employer
 - Employer payments of state and local taxes assessed on the compensation of employees
 - In addition, for an independent contractor or sole proprietor, net income or net earnings from self-employment, excluding amounts in excess of \$100,000
 - In addition, for partnerships (or LLC's taxed as partnerships), net earnings from self-employment of individual general partners as reported on IRS Form 1065 K-1, reduced by Section 179 expense deduction claimed, unreimbursed partnership expenses claimed, and depletion claimed on oil and gas properties multiplied by .9235, excluding amounts in excess of \$100,000
- **Average monthly payroll does NOT include:**
 - Any compensation to an employee whose principal place of residence is outside of the United States
 - The cash compensation of an individual employee in excess of \$100,000 on an annualized basis
 - Federal employment taxes imposed or withheld during the applicable period, including both the employee's and employer's share of FICA taxes
 - Income taxes required to be withheld from employees
- **Applicants may use one of the following reference periods to determine their average monthly payroll and corresponding PPP loan amount:**
 - Calendar year 2019
 - Calendar year 2020
 - Precise one year period before the date on which the PPP loan is made
 - For seasonal businesses, any 12-week period selected by the seasonal employer between 2/15/19 and 2/15/20
- **Supporting documentation required for determining average monthly payroll (regardless of chosen reference period)**
 - IRS Form 941's for the chosen reference period
 - State quarterly unemployment insurance tax reporting forms for the chosen reference period
 - Equivalent payroll processor records if 941's and unemployment insurance forms are not available
 - Evidence of any retirement and/or health insurance contributions (including employee group health, life, disability, vision and dental insurance) made during the chosen reference period.
 - A payroll statement or similar documentation from the pay period that covered 2/15/20 to establish you were in operation on that date.

- For self-employed individuals who file an IRS Form 1040 Schedule C, in addition to the items above, a copy of the Schedule C for the chosen reference period (2019 or 2020) along any IRS Form 1099's received for the reference period. NOTE: If using 2020 as the reference period and 2020 tax returns are not yet completed, a draft 2020 Schedule C will be required.
- For partnerships (or LLC's who file their taxes as partnerships) who file an IRS Form 1065, in addition to the items above, a copy of the IRS Form 1065 for the chosen reference period, including K-1's.
- Applicants will use the recently revised Paycheck Protection Program Borrower Application Form (SBA Form 2483 revised 1/8/21) to apply for a new first draw PPP loan.
- In order to receive full forgiveness, at least 60 percent of the PPP loan proceeds shall be used for authorized payroll costs.

Additional Eligible Uses of PPP Funds (in addition to payroll, rent, mortgage interest, and utilities already authorized) Please note that all PPP borrowers are eligible to utilize the expanded forgivable expenses EXCEPT borrowers that already had their loans forgiven.

- **Covered Operations Expenditures**
Payment 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
- **Covered Property Damage Costs**
Cost 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
- **Covered Supplier Costs**
Expenditure made by an entity to a supplier of goods for the supply of goods that—
(A) are essential to the operations of the entity at the time at which the expenditure is made; and
(B) is made pursuant to a contract, order, or purchase order—
(i) in effect at any time before the covered period with respect to the applicable covered loan; or
(ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan
- **Covered Worker Protection Expenditures**
An operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning on March 1, 2020 and ending the

date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID-19) expires related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Examples include drive thru windows, air ventilation and filtration systems, sneeze guards, indoor and outdoor space expansion, health screening enhancements, and personal protective equipment, but residential real property and intangible property is excluded.

- **Clarification of Specific Group Insurance Payments as Eligible Payroll Costs**
The subject legislation clarifies that employer-provided group insurance benefits including group life, disability, vision, or dental insurance are included in eligible PPP payroll costs.

Covered Period Changes - The covered period for use of PPP loan proceeds now means the period ending at the point of the borrower's choosing between 8 and 24 weeks after loan origination.

Increases to Existing First Round PPP Loans – The subject legislation requires the SBA to release detailed guidance within 17 days of enactment of the subject legislation that would allow borrowers that returned all or part of their PPP loan to reapply for the maximum amount applicable on loans where forgiveness has not been paid.

Additionally, this section allows borrowers whose loan calculations have increased due to changes in program guidelines to work with lenders to modify their loan amounts regardless of whether the loan has been fully disbursed, or whether the lender has begun reporting the loan status to SBA. Limited guidance has been provided thus far in IFR's 62 & 63 as follows:

- If a partnership received a PPP loan that only included amounts payroll costs for employees, but not for partner compensation, the existing PPP loan may be increased to include appropriate partner compensation
- If a seasonal employer would be eligible for a higher loan amount under the recently provided provisions of Section 336 of the Economic Aid Act, the existing loan may be increased accordingly.

Repeal of EIDL Advance Reduction

- The new law repeals section 1110(e)(6) of the CARES Act, which requires PPP borrowers to deduct the amount of their EIDL advance from their PPP forgiveness amount.
- Establishes the Sense of Congress that EIDL Advance borrowers should be made whole without regard to whether those borrowers are eligible for PPP forgiveness.

- Requires the Administrator to issue rules that ensure borrowers are made whole if they received forgiveness and their EIDL grant amount was deducted from the forgiveness amount paid.

Forgiveness Application For PPP Loans < \$150,000 – Simplified forgiveness application process instituted for loans under \$150,000 such that

- A borrower shall receive forgiveness if a borrower signs and submits to the lender a certification that is not more than one page in length that includes: (1) a description of the number of employees the borrower was able to retain because of the covered loan; (2) the estimated total amount of the loan spent on payroll costs; and, (3) the total loan amount. The borrower must also attest that the borrower accurately provided the required certification and complied with PPP loan requirements
- The SBA must provide this certification form within 24 days of enactment of the subject legislation and may not require additional materials unless necessary to substantiate revenue loss requirements or satisfy relevant statutory or regulatory requirements. Additionally, borrowers are required to retain relevant records related to employment for four years and other records for three years. The SBA may review and audit these loans to ensure against fraud
- These forgiveness application provisions apply to PPP loans made before, on, or after the date of enactment of the subject legislation, including the forgiveness of the loan.

Agents

- If an eligible recipient has knowingly retained an agent, such fees shall be paid by the eligible recipient and may not be paid out of the proceeds of a covered loan
- A lender shall only be responsible for paying fees to an agent for services for which the lender directly contracts with the agent

PPP Second Draw Loans

Program Intent – The subject legislation creates a second PPP loan called a “PPP Second Draw” loan for smaller and harder-hit businesses. These loans will be available until March 31, 2021 unless extended further by Congress. All of the previously discussed PPP Program Changes also apply to PPP Second Draw Loans except where eligibility for Second Draw PPP loans is narrower than the eligibility requirements for First Draw PPP loans as described in IFR 3245-AH 63 “Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans”

Second Draw Borrower Eligibility – In order to receive a “PPP Second Draw Loan”, an eligible entity must be eligible under the same parameters as for a First Draw PPP in addition to the following:

- Employ not more than 300 employees. Businesses with multiple locations that are eligible entities under the initial PPP requirements may employ not more than 300 employees per physical location.
- Have used or will use the full amount of its first PPP loan
- Demonstrate at least a 25% reduction in gross receipts in any quarter of 2020 relative to the same 2019 quarter; OR has experienced the required 25% reduction in ANNUAL receipts in 2020 versus 2019.
 - The law is specific that if a business is “not in operation” on February 15, 2020 it shall not be eligible for a Second Draw PPP loan.
 - Gross receipts are defined in the same manner as under the size standards for the regular SBA 7(a) loan program which
 - Includes all revenue in whatever form received or accrued (in accordance with the entity’s accounting method) including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions reduced by returns and allowances
 - Excludes taxes collected for and remitted to a taxing authority if included in gross income (such as sales or similar taxes); proceeds from transactions between a concern and any affiliate(s); and any forgiveness amount of a first draw PPP loan that a borrower received in calendar year 2020
 - If the business was not in operation during 2019 but was in operation as of 2/15/20, the law indicates that the applicant would compare their gross receipts from the second, third or fourth quarters of 2020 to their gross receipts during the first quarter of 2020 which would be their reference period
 - If a borrower chooses to evidence their required 25% revenue reduction based on annual receipts, supporting documentation would be copies of the annual tax returns for 2019 and 2020. Otherwise quarterly financial statements or bank statements will be required to evidence the revenue reduction.

- For Second Draw loans of \$150,000 or less, supporting documentation for the revenue reduction is NOT required at the time the Borrower submits its loan application, but must be submitted before or concurrent with its application for loan forgiveness.
- Applications submitted on or after January 1, 2021 are eligible to utilize the gross receipts from the fourth quarter of 2020 to compare against fourth quarter 2019.
- An eligible entity may only receive one PPP second draw loan
- Applicants for Second Draw loans must complete and submit to the Bank the Paycheck Protection Program Second Draw Borrower Application Form (SBA Form 2483-SD revised 1/8/21).

Second Draw Loan Terms

- Loan Amount – Borrowers other than those operating under NAICS code 72 (Accommodations and Food Services) may receive a loan amount of up to \$2MM based on 2.5x the average monthly payroll from one of the following reference periods:
 - During the one year period before the date on which the loan is made; OR
 - Calendar year 2020
 - Calendar year 2019 – **Important Note: If you used calendar year 2019 as your reference period to obtain your initial PPP loan from our Bank, and are also using calendar year 2019 as your reference period for your Second Draw Loan, you can use the same supporting information for the requested loan amount which the Bank already has on file. Only a new application form itself will be required for a Second Draw Loan in these circumstances.**
 - Seasonal employers: at the election of the eligible entity, the average total monthly payments for payroll costs incurred or paid by the eligible entity for any 12-week period between February 15, 2019 and February 15, 2020
 - Definition of Seasonal Employer - an eligible recipient which: (1) operates for no more than seven months in a year; or, (2) earned no more than 1/3 of its receipts in any six months in the prior calendar year
 - New entities: for businesses not in existence during the year period preceding February 15, 2020, take the sum of the total monthly payments by the eligible entity for payroll costs paid or incurred by the eligible entity as of the date on which the eligible entity applies for the covered loan divided by the number of months in which those payroll costs were paid or incurred

- Loan Amounts for Hotels & Restaurants and Similar Businesses – Borrowers operating under NAICS code 72 (Hospitality, Accommodations and Food Services) may receive a loan amount of up \$2MM based on **3.5x** the average monthly payroll from one of the following reference periods:
 - During the one year period before the date on which the loan is made; OR
 - Calendar year 2020; OR
 - Calendar year 2019 - **Important Note: If you used calendar year 2019 as your reference period to obtain your initial PPP loan from our Bank, and are also using calendar year 2019 as your reference period for your Second Draw Loan, you can use the same supporting information in determining your average monthly payroll to determine the requested loan amount which the Bank already has on file. Only a new application form itself will be required for a Second Draw Loan in these circumstances.**

Second Draw Loan Forgiveness –

- Borrowers of a PPP second draw loan are eligible for loan forgiveness equal to the sum of their payroll costs, as well as covered mortgage, rent, and utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred during the covered period. Full forgiveness will still require that at least 60% of loan proceeds be used for authorized payroll costs
- Existing safe harbors on restoring FTE and salaries and wages are extended. Specifically, the statute applies the rule of reducing loan forgiveness for the borrower reducing the number of employees retained and reducing employees' salaries in excess of 25%

Second Draw Loan Forgiveness Applications – In addition to the simplified forgiveness application process instituted for loans under \$150,000 as detailed above under “Forgiveness Application For PPP Loans < \$150,000”, Borrowers of a PPP second draw loan may submit a certification attesting that the entity meets the revenue loss requirements on or before the date the entity submits its loan forgiveness application and non-profit organizations may utilize gross receipts to calculate their revenue loss.

Debt Relief for SBA Borrowers (Section 1112 Payments)

The new law extends debt relief for existing SBA Borrowers as follows:

- 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, established under Section 1112 of the CARES Act.
- Provides that all borrowers with qualifying loans approved by the SBA prior to the CARES Act (3/27/20) will receive an additional three months of P&I, starting in February 2021. Going forward, those payments will be capped at \$9,000 per borrower per month.
- Provides that, after the three-month period described above, borrowers considered to be underserved—i.e., the smallest and hardest-hit by the pandemic—will receive an additional five months of P&I payments, also capped at \$9,000 per borrower per month.

These borrowers include:

- Borrowers with SBA microloans or 7(a) Community Advantage loans
- Borrowers with any 7(a) or 504 loan in the hardest-hit sectors, as measured by the severity of sector-wide job losses since the start of the pandemic, including all those belong to 2- and 3-digit NAICS categories with the most severe job losses since the start of the pandemic: accommodation and food services (72); arts, entertainment, and recreation (71); educational services (61); mining and logging (213); apparel (315); clothing and clothing accessory stores (448); sporting goods, hobby, book, and music stores (451); air transportation (481); transit and ground passenger transportation (485); scenic and sightseeing transportation (487); publishing industries, except Internet (511); motion picture and sound recording industries (512); broadcasting, except Internet (515); rental and leasing services (532); and personal and laundry services (812).
- Provides SBA payments of P&I on the first 6 months of newly approved loans will resume for all loans approved between February 1 and September 30, 2021, also capped at \$9,000 per month.
- The new law as currently written does NOT provide any additional Section 1112 payments for existing loans approved between 3/27/20 and 9/27/20 as those borrowers have or will have already received 6 months of Section 1112 payments under the first round of debt relief.
- The new law as currently written does NOT provide any Section 1112 payments for new or existing loans approved between 9/28/20 and 1/31/21. **Note: It may make sense, where appropriate, to defer applications to SBA until 2/1/21 to benefit from Section 1112 payments as well for SBA fee relief as described later in this document. The Bank, however, will accept and process SBA loan applications internally prior to that date but may delay submitting them to SBA at the client's specific request.**
- If the SBA projects that appropriations provided for the debt relief program are insufficient to fund the extensions provided, the Administrator may proportionally reduce the number of months provided in each extension.
- Clarifies eligibility and increases program integrity:
 - SBA payments should be made on any loan approved before the applicable deadline, and debt relief payments should be made only once the loan is fully disbursed.
 - SBA may establish a minimum loan maturity period for each loan product covered under this section to prevent program abuse.
 - Any business or applicant may only receive P&I payments for one SBA 7(a) or 504 loan approved after date of Economic Aid law enactment (12/27/20).

Tax Treatment for Stimulus Funds

PPP Loans (Existing & Second Draw) – PPP loans forgiven are not taxable income but the expenses that give rise to forgiveness are tax deductible

- *no amount shall be included in the gross income of the eligible recipient by reason of forgiveness of indebtedness*
- *no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income*
- For partnerships and S-Corporations:
 - *Any amount excluded from income shall be treated as tax-exempt income for purposes of sections 705 and 1366 of the tax code. This increases the owner's basis.*

EIDL Loan Advances/Grants will also not be included in gross income and expenses paid with EIDL Advance/Grant Funds will be deductible

SBA 7a Program Changes

The new law provides the following temporary enhancements to SBA 7a Loans approved by SBA as follows:

- For loans approved by SBA between 2/1/21 and 9/30/21, increases to 90% the loan guarantee on 7(a) loans, including for Community Advantage loans
- For loans approved by SBA between 2/1/21 and 9/30/21, waives lender and borrower fees for the 7(a) loan program through September 30, 2021. [this includes the up-front guaranty fee and the ongoing servicing fee.] **Note: It may make sense, where appropriate, to defer applications to SBA until 2/1/21 to benefit from SBA fee relief as well for Section 1112 payments as described previously in this document. The Bank, however, will accept and process SBA loan applications internally prior to that date but may delay submitting them to SBA at the client's specific request.**
- Increases the Express Loan amount from \$350,000 to \$1 million for the period January 1, 2021 through September 30, 2021, with that amount reverting, on a permanent basis to \$500,000 beginning October 1, 2021.
- From the date of enactment (12/27/20) thru 9/30/21, temporarily increases from 50% to 75% the Express Loan guaranty percentage for loans of \$350,000 and less. The guarantee percentage remains at 50% for SBA Express loans over \$350,000. On October 1, 2021, the guarantee reverts to 50% for all Express Loans.

SBA 504 Program Changes

The new law provides the following temporary enhancements to SBA 504 Loans approved by SBA thru September 30, 2021 as follows:

- For loans approved by SBA between 2/1/21 and 9/30/21, waives lender and borrower fees for the SBA 504 loan program through September 30, 2021.
- The 504 refinancing program is also being enhanced effective 2/1/21 as follows:
 - Instead of allowing a maximum loan to value (LTV) of 85% when receiving cash out for eligible business expenses under the 504 refinance program, that maximum LTV will be increased to 90%
 - Effective 2/1/21, loans eligible for refinancing under the 504 refinance program now only have to be in existence for 6 months rather than two years.
 - Effective 2/1/21, the business no longer needs to evidence specific job creation or retention requirements, but is eligible as long as their FTE's at the time of application to SBA are equal to or greater than 1 FTE per \$75,000 in SBA 504 loan amount.

EIDL Advance Program Changes

The new law provides the following enhancements to the EIDL Advance/Grant Program:

- Provides additional targeted funding for eligible entities located in low-income communities or that have suffered an economic loss of greater than 30 percent, and employs not more than 300 employees.
- Makes entities in low-income communities that received an EIDL Advance under Section 1110 of the CARES Act eligible to receive an amount equal to the difference of what the entity received under the CARES Act and \$10,000.
- Provides \$10,000 grants to eligible applicants in low-income communities that did not secure grants because funding had run out.
- Extends covered period for Emergency EIDL grants through December 31, 2021.
- Allows more flexibility for the SBA to verify that Emergency EIDL grant applicants have submitted accurate information.
- Extends time for SBA to approve and disburse Emergency EIDL grants from 3 to 21 days.

Direct Grants for Shuttered Venue Operators

The new law authorizes \$15 billion for the SBA to make grants to eligible live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, or talent representatives who demonstrate a 25% reduction in revenues.

Stimulus Program Funding

The new law provides the following authorizations and appropriations to fund stimulus efforts totaling \$900 billion as follows:

- Extends to March 31, 2021, the authority to make commitments under both the extension of round one of PPP and the Second Draw of PPP.
- Sets the joint authorization level for both round one of PPP and the Second Draw of PPP at \$806.45 billion.
- Sets regular SBA 7(a) loan program authorization cap at \$75 billion, effective from the date of enactment through September 30, 2021.
- \$284.45 billion appropriation for PPP, including the following set-asides:
 - Lenders:
 - \$15 billion for PPP loans (initial and second draw) issued by community financial institutions, including community development financial institutions (CDFIs) and minority depository institutions (MDIs);
 - \$15 billion for PPP loans (initial and second draw) issued by certain small depository institutions.
 - Borrowers:
 - \$35 billion for first-time borrowers, \$15 billion of which for smaller, first-time borrowers with 10 or fewer employees, or loans less than \$250,000 in low-income areas;
 - \$25 billion for second draw PPP loans for smaller borrowers with 10 or fewer employees, or loans less than \$250,000 in low-income area
- After 25 days, the SBA Administrator may adjust the set-asides as necessary
- \$25 million for the Minority Business Development Centers program under the Minority Business Development Agency (MBDA);
- \$50 million for PPP auditing and fraud mitigation purposes;
- \$20 billion for the Targeted EIDL Advance program, of which \$20 million for the Inspector General;
- \$57 million for the SBA Microloan program
- \$1.9 billion to carry out regular 7(a) and 504 stimulus provisions for increased guarantees, increased Express loan size, and fee waivers;
- \$3.5 billion for the Debt Relief program (Section 1112 payments)
- \$15 billion for grants for live venues

The Bank will continue to amend this guidance as more details are received based upon SBA issuing regulations pursuant to the new law.