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PAYCHECK PROTECTION PROGRAM (PPP)

Created by [Shields Legal Group](#)
For Business Owners

Updated for the Second Draw

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Paycheck Protection Program: Second Draw Updates

Overview and Updates to the Program

What is the purpose of this document?

This document will provide an overview of terms as they were released by the SBA on January 7, 2021 regarding the Paycheck Protection Program. There are various terms, processes, and application related information that is not yet finalized or publicly available to borrowers, also outlined here.

What is the Paycheck Protection Program?

The Paycheck Protection Program (PPP) is a loan designed to provide a direct incentive for small businesses to keep their workers on payroll. SBA will forgive loans if all employee retention criteria are met, and the funds are used for eligible expenses. You can apply through any existing SBA 7(a) lender, FDIC institution, or federally insured credit union. Talk to your bank TODAY to ensure they are participating in this program.

What is the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act?

Among other provisions, the Economic Aid Act expands the PPP for an additional round of funding, authorizing the SBA to guarantee additional loans under the CARES Act. The Economic Aid Act also changes the qualifying and forgiveness terms of PPP, outlined in this document.

The SBA intends to provide a larger focus on the smallest businesses by lowering the borrowing limit, employee count, and serving community banks before larger lenders.

Paycheck Protection Program: Second Draw Updates

Comparing the Terms of First Draw to Second Draw

	First Draw		Second Draw
	<i>Passed through the CARES Act passed March 2020</i>		<i>Passed through the Economic Aid Act passed December 2020</i>
UPDATED & ADAPTED	Max borrowing is \$10mm per entity and affiliate	→	Max borrowing is now \$2m per entity and affiliate
	Maximum employee count is 500	→	Maximum employee count is 300
	Borrower's Covered Period is either 8 or 24 weeks	→	Borrower elects Covered Period any count between 8 and 24 weeks
	Borrowers with NAICS codes starting '72' have separate limits	→	Expansion of NAICS codes now includes '72', '511110', and '5151'
	No differentiated payroll calculation for NAICS codes '72'	→	For NAICS codes beginning with 72, the calc is 3.5x monthly payroll
	Qualifying expenses include payroll, rent, utilities, interest on business mortgages	→	Qualifying expenses have been expanded to include supplier costs, fixes to property damage, COVID PPE, and operational expenditures
	No revenue test is required	→	Revenue test
IDENTICAL	Borrowing amount = 2.5x average monthly payroll	→	Borrowing amount = 2.5x average monthly payroll
	Borrowers can use 2019 payroll numbers to calculate the above	→	Borrowers can use 2019 payroll numbers to calculate the above
	Affiliate rules regarding company ownership	→	Affiliate rules regarding company ownership
	The Loan Structure is identical First and Second Draw	→	The Loan Structure is identical First and Second Draw

Focus of this document

Paycheck Protection Program: Second Draw Updates

Next Steps

- 1) Talk to your bank **as soon as possible**. They must confirm their participation in the PPP Second Draw, your business's eligibility, and the timeline under which they anticipate distributing funds.
- 2) Gather all documentation required for the Second Draw, including:
 - Payroll Documentation
 - Financial Statements demonstrating a 25% quarterly decrease in Gross Receipts
 - 2019 Tax Returns, 2019 & 2020 Form 941s, and driver's license
 - Bank account(s) in which you'd like to receive the funds
 - Any other documentation as requested or required by your bank/lender during the First Draw
- 3) If you have not applied for forgiveness, demonstrably document to your bank that all funds either have been used for qualifying expenses or will be used for qualifying expenses prior to receiving Second Draw funds
- 4) Reach out to Shields Legal Group with additional questions:

inquiry@shieldslegal.com



DETAILED INFORMATION ABOUT THE PROGRAM

UPDATED FOR SECOND DRAW

Paycheck Protection Program Second Draw (PPP)

High-level Explanation of the Program for Business Owners

Overview

- Meant to help small businesses impacted by COVID-19 and the resulting economic downturn to fund 8-weeks of qualifying expenses
- Amending the existing SBA 7(a) loan channel, this newly created lending program certified up to \$349 billion in funding
- Loan amounts are tied directly to payroll costs, not to exceed **\$10,000,000**
- Up to 100% of the loan qualifies for forgiveness if specific criteria are met

Qualifying Criteria (additional criteria required, as defined by Borrower Application)

- | | |
|---|---|
| 1 | Employing less than 300 employees |
| 2 | Sole-proprietor or independent contractor |
| 3 | NAICS code beginning with '72', '511110', or '5151', and has less than 300 employees at any single location |
| 4 | Receives Financial assistance under Section 301 |
| 5 | Franchise Identified Code established with the SBIC |
| 6 | Experienced a quarterly 25% decrease in Gross Receipts |
| 7 | Requires the funds to retain workers and maintain payroll |
| 8 | Does not fail affiliation determinations of the SBA |
| 9 | Application business has not applied for a duplicate loan |

Only one is required to qualify

ALL must apply

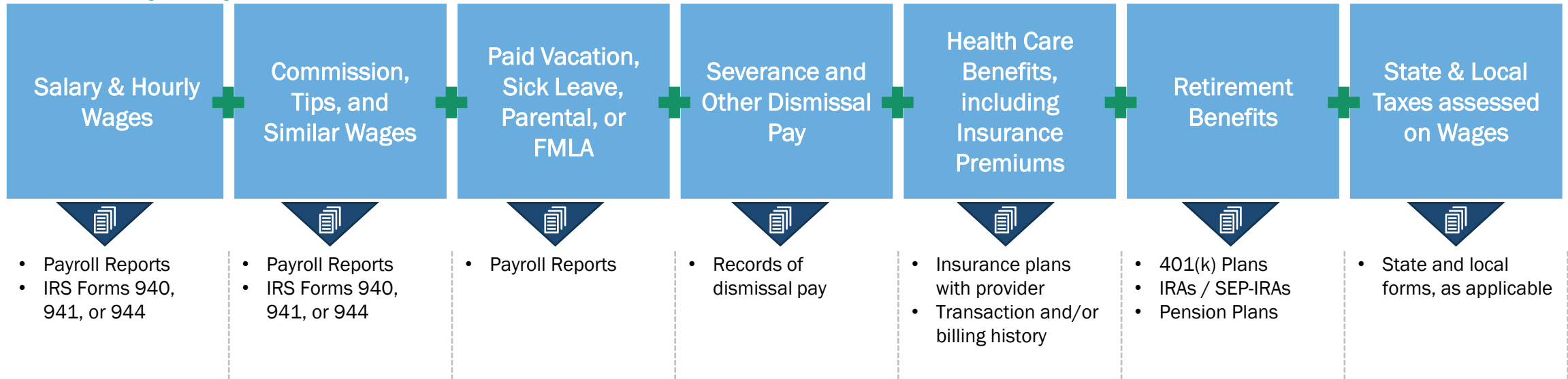
Key Loan Details

- Total allowable loan amount calculated as 2.5x average monthly payroll expense from calendar year 2019 or 2020
 - Salaries above \$100,000 per year are capped at \$100,000 in calculation
 - Total Second Draw maximum is \$2mm
 - Total borrowing maximum is \$4mm (First Draw + Second Draw)
 - Payroll expenses are all employee expenses (e.g. healthcare benefits, state/local taxes, etc.); does not include Federal tax withholdings
- Decrease in Gross Receipts must be greater than 25%. Calculation:
 - ✓ $25\% \geq - \left(\frac{\text{Quarter 1 2020}}{\text{Quarter 1 2019}} - 1 \right)$
 - Example: Quarter 3 2019 Gross Receipts were \$50,000, Quarter 3 2020 Gross Receipts were \$30,000, The resulting decrease is **40%**.
- Does not require proof of inability to obtain credit elsewhere
- No Personal Guarantees needed
- Payment deferment of principal, interest, and fees for 6 months

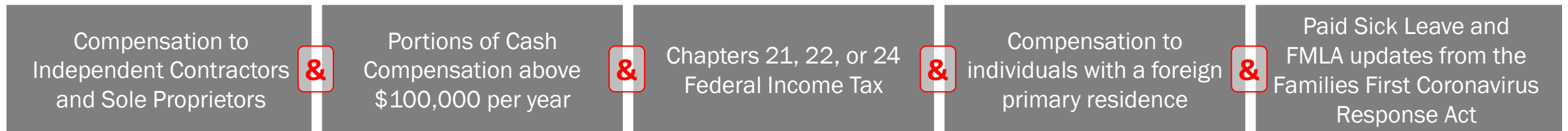
Paycheck Protection Program Second Draw (PPP)

Calculating and Documenting Payroll Costs

Monthly Payroll for Calendar Year 2019 DOES INCLUDE:



DOES NOT INCLUDE:



Paycheck Protection Program Second Draw (PPP)

Department of Treasury Guidance

Application Overview

- **Business Information** – gathers general information about the business, including address, TINs, contact info, d/b/a, etc.
- **Applicant Ownership** – name of business owners greater than 20%
- **Questionnaire** – indicate business and personal exposures to bankruptcies, criminal history, or existing loan deals with SBA
- **Representations, Authorizations, and Certifications** – economic uncertainty requires that this loan is necessary, will only be used for business expenses, will retain workers, applicant will not receive another loan under this program, among other items

Loan Structure

- **Interest Rate** – 1.0%
- **Loan Maturity** – 2 years
- **Payment Deferral** – 6 months
- **SBA Loan Guarantee** – 100%
- **Collateral Required** – None
- **Personal Guarantees** – None

Bank Underwriting Requirements

The underwriting lending institution must verify that the borrower:

- Is eligible as defined by the certifications and representations included in the Borrower Application
- Has employees to which it paid compensation and payroll taxes
- Confirm average monthly payroll costs submitted on the application
- Follow applicable Bank Secrecy Act requirements

Fee Allowances

Businesses may enlist Agents to assist in the application completion process. Agents will be paid by the Lender the following:

- **Loans \$350,000 and under** – 1.00%
- **Loans greater than \$350,000 to \$2 million** – 0.50%
- **Loans greater than \$2 million** – 0.25%

Agents are representatives of the Borrower and can be attorneys, accountants, consultants, brokers, or other entity assisting the applicant.

Paycheck Protection Program Second Draw (PPP)

Loan Forgiveness Requirements

Loan Forgiveness Criteria

- Loan becomes forgivable when the borrower spends all funds during the 8-week period after closing on qualifying expenses:
 - Payroll Costs
 - Interest on business mortgages
 - Rent in a lease
 - Utility payments
 - Additional wages to tipped employees
- Forgiveness amount cannot be greater than the original principal
- Funds used for other purposes will be treated as traditional SBA debt

1

$$\text{Payroll Costs} \times \frac{\text{Average Monthly FTE Count for 8 weeks beginning on Loan Origination}}{\text{Average Monthly FTE Count from Feb 15, 2019 thru June 30, 2019}}$$

--- OR ---

$$\text{Payroll Costs} \times \frac{\text{Average Monthly FTE Count for 8 weeks beginning on Loan Origination}}{\text{Average Monthly FTE Count from Jan 1, 2020 thru Feb 29, 2020}}$$

2

Payroll Costs – Reduction Amount in Individual Wages greater than 25%

3

Percentage of Total Loan Funds not spent on Qualifying Expenses at any point

4

Percentage of Total Loan Funds not spent on Qualifying Expenses within the immediate 8-weeks following receipt

5

At least 75% of loan proceeds must be for payroll costs within the 8-weeks immediately following receipt of loan funds

Paycheck Protection Program Second Draw (PPP)

Recommended Implementation Practices

Who should process my loan application?

- Due to a multitude of reporting and verification requirements places on lending institutions, the fastest loan provider will likely be your existing banking institution. Talk with them to ensure they are offering this service.

How should I receive and track the expenses of PPP Funds?

- We suggest opening two NEW accounts with your PPP lending bank (only if they are an FDIC-insured institution):
 - 1) Concentration Account: to receive and hold the loan proceeds
 - 2) Transaction Account: transfer funds from the Concentration Account to process transactions, checks, and invoices
 - The balance of this account should be at or close to \$0 except when funds are needed for specific purposes.
 - This creates a layer between the entirety of your PPP funds and individuals who have your account number from checks, wire transfers, etc.
- Store all documentation related to expenses funded through the newly created accounts – checks, paystubs, lease contracts, utility bills and contracts, invoices from independent contractors, etc. – in a central location for easy access.

How should I prepare my business for loan forgiveness?

- Gather all documentation as they relate to the use of funds.
- Prepare a plan to disburse all funds within the 8-week period immediately following closing.
 - The portion of funds not used within 8-weeks becomes converted to a 22-month term loan at 0.5% interest.
- Ensure all transactions from the Concentration and Transaction Accounts are annotated and have clear documentation.
- At least 75% of loan proceeds must be used for payroll costs within the 8-weeks immediately following receipt of funds.

Paycheck Protection Program Second Draw (PPP)

Pertinent Department of Treasury Clarifications

Do Independent Contractors qualify as employees for the purposes of this loan?

- No, ICs can apply for their own PPP loan, so do not count for purposes of a borrower's loan calculation, nor do they count for purposes of a borrower's PPP loan forgiveness.

What is the expected Interest Rate?

- The interest rate will be 1% for all loan applicants.

When will I begin paying for my PPP loan?

- Borrower will not make payments for 6 months following the receipt of funds.
- Interest will continue to accrue on the loan.
 - Accrued and unpaid interest can be forgiven.

How will Lenders verify loan forgiveness?

- Lenders don't need to conduct verification if the borrower submits documentation and attests to the forgiveness.
 - Lenders will be held harmless if the above criteria is met.

What process will Lenders follow to underwrite these loans?

- Confirm receipt of borrower certifications in the PPP application form.
- Confirm receipt of information demonstrating that a borrower had employees.
- Confirm the dollar amount of average monthly payroll by reviewing payroll documentation submitted with the application.

How should I treat Federal taxes in conjunction with calculating Payroll Costs?

- Payroll Costs are defined as Gross Income before federal and state withholdings and DO NOT include employer- or employee-paid portions of payroll taxes

Will the forgiven portion of my loan create tax liability?

- No, portions of the loan which are forgiven will be excluded from gross business income.



Your business. Our approach. Your business is our priority.

GET IN TOUCH

We work with you to develop the right legal strategy for your business. Engage us with confidence – contact us today.

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Learn How We're Preparing
Business Owners to Get
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