

# **THE ADDITIONAL CORONAVIRUS RESPONSE AND RELIEF ACT (ACRRA)**

## **Paycheck Protection Program Changes**

The President signed the Consolidated Appropriations Act of 2021 (H.R. 133) on December 27, 2020, which includes significant benefits for taxpayers. Those benefits are included in the following acts, which are part of Consolidated Appropriations Act:

1. The Additional Coronavirus Response and Relief Act (ACRRA); and
2. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTRA).

This summary will discuss PPP loan eligibility and related issues under the ACRRA. The TCDTRA, which includes other important tax legislation, as well as other PPP issues, including loan forgiveness, will be discussed in future summaries.

The ACRRA reopens the PPP loan program, which stopped in August 2019. Now extended through March 31, 2021, there is an additional \$284.45 billion in funding, consisting of:

1. Revises eligibility requirements for the loans;
2. The Small Business Administration (SBA) has until January 13, 2021 (17 days from the date of enactment), to release guidance on this additional funding;
3. New “second draw loans” for smaller businesses whose gross receipts have dropped;
4. For Second Draw loans < \$150,000, borrowers are not required to submit revenue reduction documentation with the application but is required at forgiveness; and
5. Supplemental funding for original PPP loans (“First Draw”), where the loan amount would have changed due to new rules that have been released (Round 1 funding).

For both First Draw and Second Draw PPP loans:

1. Payroll costs now include employer payments for group life, disability, vision, and dental insurance payments.
2. Funds may be used for payroll, rent utilities, mortgage plus some new uses.
3. For the purposes of calculating covered payroll expenses, an owner’s \$100,000 salary/wage limitation now applies on an annualized basis.
4. Act makes it clear the Schedule F Farmers are eligible for PPP loan based on 2019 Schedule F gross income up to \$100k.
5. 501(c)(6) non-profit entities (except for sports teams & those primarily involved in lobbying) are eligible to receive a PPP loan if they meet the necessity requirement.
6. Retroactively allows borrowers to claim the Employee Retention Credit (ERC). Wages paid with forgiven PPP debt are not included in payroll costs taken into account in computing ERC (will be discussed in detail in subsequent summary).
7. Self-employed individuals, even with no payroll, may be eligible.
8. Here is the link to the SBA website: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.
9. Contact a lender that works with SBA 7(a) loans as soon as possible. We can assist.

## PPP SECOND DRAW RULES

1. The ACRRRA creates a second loan from the Paycheck Protection Program for small businesses (definition of eligible businesses slightly modified from previous round) for smaller and harder-hit businesses, with a maximum loan amount of \$2 million (previous max was \$10 million) per eligible entity. These are loans for businesses that can show significant losses in 2020 over 2019. To qualify, the entity, the entity must:
2. Employ not more than 300 employees (including part-time & seasonal);
3. Demonstrate at least a 25% reduction in gross receipts compared to the prior applicable calendar quarter:
4. If the entity wasn't in business during all of 2019, it must show a 25% reduction in gross receipts during any quarter in 2020 compared to the same quarter in 2019 it was in operation.
5. Have previously received a PPP loan.
6. Have used, or will use, the first loan proceeds prior to disbursement of the second loan. The statute does not provide a time period for when the first loan would eventually have to be used, but if it is not used in the 24 weeks since the original loan disbursement date it would not be forgivable.
7. There is nothing in the new law addressing forgiveness or specific use of the original PPP loans before accessing a second draw.
8. The same waiver of affiliation rules that applied to the initial PPP loans will apply to the second draw PPP loans. Similarly, the rule covering hotels and restaurants with more than one physical location that applied for the first PPP loans applies to the second draw loans, except the employee limit per location is 300 employees.
9. Eligibility for any PPP loan also requires meeting the "Necessity Test". "Necessity" has not been clearly defined.
10. Here's the link to the Second Draw Loan Application: <https://www.sba.gov/document/sba-form-2483-sd-ppp-second-draw-borrower-application-form>

## LOAN TERMS

Second Draw PPP Loans are generally subject to the same terms, conditions & requirements as the First Draw Loans.

1. Borrowers can elect to calculate the second round based on 2 ½ times the average monthly payroll costs during any 12-month period ending prior to the date of the loan or the 2019 calendar year.
2. The maximum loan will be for 3 ½ times the average monthly payroll for restaurants, hotels, motels and certain other food and lodging businesses (NAIC code 72).
3. Seasonal & new businesses have slightly different rules.

## FIRST DRAW (SUPPLEMENTAL) FUNDING REQUESTS

Borrowers can also submit supplemental first-time PPP loan requests. The rules are a favorable hybrid of the original & new. Potential applicants and rules include:

1. First-time borrowers must have 500 or fewer employees. The maximum loan amount is \$10 million.

2. Borrowers can apply for the maximum amount or the difference between its maximum & what it received.
  1. Borrowers whose original PPP loan amount would have changed due to new rules that have been released. This applies to partnerships where the original loan did not include the self-employment earning of the partners.
  2. Those that returned their original loans or took reduced loans to qualify for other benefits that are no longer limited for PPP recipients, such as the Employee Retention Credit.
3. Borrowers must request this additional funding before forgiveness is granted on their original PPP loan. So, borrowers that may want to borrow additional funds should wait to apply for forgiveness and attempt to withdraw forgiveness applications that have already been submitted.
4. *Businesses that never applied for a PPP loan may now apply for a First Draw Loan. Those businesses are not eligible for a second draw.*
5. Borrowers in bankruptcy must receive approval from bankruptcy court to receive additional PPP funds or a new PPP loan.
6. Here's the link to the First Draw Loan Application: <https://www.sba.gov/document/sba-form-2483-paycheck-protection-program-borrower-application-form>

## GRANTS

Economic Injury Disaster Loan (EIDL) Grants/Advances.

1. Advance fund replenished with \$20 Billion to be distributed to low income communities first.
2. PPP forgiveness amounts will no longer be reduced by EIDL advances the borrowers received. The SBA is also directed to issue rules ensuring that borrowers that received forgiveness reduced by their EIDL advance be "made whole."
3. EIDL advances are not taxable.

## Shuttered Venue Grants

\$15 Billion was provided for non-taxable grants for eligible live venue operators or promoters, theatrical producers and other entertainment-related businesses that demonstrate a 25% reduction in revenues in the first, second, or third quarter of 2020 as compared to the same quarter in 2019.

1. While not PPP loans, the money must be used for expenses that mirror those that may receive PPP forgiveness, i.e., payroll, rent, etc.
2. Recipients are not eligible for PPP loans.

## INELIGIBLE BUSINESSES

The following businesses are ineligible for the second round of PPP loans:

1. Entities ineligible to receive SBA loans;
2. Businesses that weren't in operation on February 15, 2020 (this also applied to the first round of loans);
3. Publicly traded entities (for new loans);

4. Businesses listed in §120.110 of Title 13 of the Code of Federal Regulations, which includes businesses located in a foreign country, businesses involving gambling or activities of a “prurient sexual nature,” and private clubs;
5. Persons or entities that receive a shuttered venue operator grant under the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act;
6. Entities involved in political and lobbying activities;
7. Entities affiliated with entities in the People’s Republic of China; and
8. Registrants under the Foreign Agents Registration Act (ACRRA §§310, 311)

#### Tips to Increase Your Initial PPP Loan

1. Check for accuracy and potentially amend the initial application as needed. Remember, an additional First Draw Loan may be available as a result of law changes – not as a result of an initial application error, i.e., the payroll listed was understated.
2. Be aware of amounts includable & limitations on the base payroll submitted.
3. If a seasonal employer received a loan before the alternative criterion for such employers was posted on April 28, 2020, and would be eligible for a higher maximum loan amount under the alternative criterion, the lender may electronically submit a request an increase to the PPP loan amount.
4. If a partnership received a loan that only included amounts necessary for payroll costs of the partnership’s employees and other eligible operating expenses, but did not include any amount for partner compensation, the borrower may request an increase to the loan amount to include appropriate partner compensation.
5. The Interim Final Rule posted on 05/22 allows borrowers to factor tips paid by customers to employees into their calculation of payroll costs.