

PPP2 Summary
Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act

Who is eligible?¹

- Businesses, sole proprietors, self-employed individuals and non-profits (including churches) in operation on February 15, 2020
- PPP1 Recipients:
 - 300 or fewer employees²
 - Have or will use full amount of PPP1 loan before the disbursement of the PPP2 loan³
 - 25% reduction in gross receipts in any 2020 quarter compared to same quarter in 2019⁴ (Section 311)
- First-Time Borrowers (did not receive a PPP1 loan)
 - 500 or fewer employees
 - Been in operations since February 15, 2020
 - Eligible for other SBA 7(a) loans
- Did *not* receive a Shuttered Venue Operator Grant (Section 311)

¹ **Planning Question:** It is unclear how and when PPP1 loan forgiveness will be counted as part of “gross receipts”. The timing will affect the organization’s ability to pass the 25% gross receipts reduction test.

PPP2 loans are available to Sec. 501(c)(6) business leagues, such as chambers of commerce, visitors’ bureaus, etc., and “destination marketing organizations”, provided they have 300 or fewer employees and do not receive more than 15% of receipts from lobbying. The lobbying activities must comprise no more than 15% of the organization’s total activities and have cost no more than \$1 million during the most recent tax year that ended prior to Feb. 15, 2020. In addition, certain destination marketing organizations (DMOs), housing cooperatives, newspapers, broadcasters, and radio stations qualify for PPP2 loans.

Public companies, business types enumerated in 13 CFR § 120.110 other than (i) non-profit businesses and (ii) businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting; any business concern or entity primarily engaged in political or lobbying activities, which shall include any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents; 501(c)(6) organizations that constitute professional sports leagues and entities with the purpose of promoting or participating in a political campaign or other lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995; and (i) Any business concern of which 20% of its economic interests is owned by an entity (A) created in or organized under the laws of the People’s Republic of China (PRC) or the Special Administrative Region of Hong Kong (Hong Kong) or (B) that has “significant operations” in the PRC or Hong Kong, or (ii) any business concern that has a board member who is a resident of the PRC.

² Unlike the CARES Act, this Act does not expressly require the 300 employees to have their principal place of residence is in the United States.

For PPP2 loans, the maximum of 300 employees cap is the only size test expressly stated in the Act to determine general eligibility. The CARES Act and the ensuing implementing SBA regulations and guidance expanded the 500-employee cap for PPP1 loans to include, as independent alternative bases of size eligibility, (i) NAICS Code size standards applicable to the primary industry sector in which the PPP loan applicant operates, and (ii) the SBA’s Alternative Size Standards, both of which are used to determine eligibility for other SBA loan programs. For the present, these alternative size tests to determine eligibility remain limited to PPP1 loans.

Generally, the affiliation rules that applied to applicants of PPP1 loans continue to apply (except that PPP2 loans the employee size standard is reduced to a maximum of 300 employees) for purposes of determining affiliation. Section 317 of the Act adds an exception to the PPP affiliation rules for news organizations.

³ The Act’s language is unclear regarding when the PPP1 funds must be spent. It is assumed that all PPP1 funds must be spent prior to disbursement of a PPP2 loan.

⁴ Loan amounts of less than \$150,000 can be requested by submitting a certification, attesting that the entity meets the revenue loss requirements.

Consolidated Appropriations Act of 2021

Maximum Loan Amt	2.5 times the average monthly payroll costs in the 12-months prior to the loan or calendar year 2019 with a cap of \$2,000,000. ⁵
Forgivable Costs	Expanded definition of “Forgivable Costs” applies to PPP1 and PPP2 loans <ul style="list-style-type: none"> • Payroll⁶, rent, covered secured loan interest, utilities, operating costs (including software, cloud computing and accounting services); • Covered operations expenditures (i.e. software and cloud computing services used for the business)⁷; • Property damage, vandalism and looting costs due to public disturbances that occurred during 2020 that are not covered by insurance; • Essential supplier expenditures⁸; and, • Investments in facility modifications and PPE to comply with Covid-19 federal health and safety guidelines⁹ (Sections 304 & 308)
Maximum Forgiveness	As with PPP1, full forgiveness will require the 60/40 allocation between payroll and non- payroll costs. Maximum forgiveness is the lesser of loan amount or covered payroll cost divided by 60%

Gross receipts of a tax-exempt entity include all amounts treated as gross receipts under Section 6033 of the Tax Code. Translated to “English”, gross receipts include all income the organization receives with no offsets for related costs. (See IRC Reg 1.6033-2(g)(4)).

⁵ Seasonal employers’ maximum loan is 2.5 times the average monthly payroll during any 12-week period between February 15, 2019 and February 15, 2020 chosen by the employer. Seasonal employers are defined as: (i) businesses that do not operate for more than seven months in a calendar year; or, (ii) earned no more than one-third of their gross receipts in any six months of the prior calendar year.

Borrowers with NAICS codes starting with 72 (hotels and restaurants) and having fewer than 300 employees per physical location, can get up to 3.5 times their average monthly payroll cost per location, up to a maximum loan of \$2,000,000.

⁶ Section 308 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act specifically includes health, group life, disability, vision and dental insurance in the definition of payroll costs.

⁷ “...the term ‘covered operations expenditure’ means a 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.” Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Section 304(b)(2)

⁸ “Covered supplier cost” means expenditures 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 loan covered period; or (ii) with respect to perishable goods, in effect before or during the loan covered period.

⁹ The Act call these costs “covered worker protection expenditures”. They include operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with Covid-19 health requirements (e.g. HHS CDC, OSHA, State and local) until the expiration of the COVID-19 provisions of the National Emergencies Act (50 USC 1601 et seq.). The Act includes a list of specifically authorized expenditures including: drive-through windows; ventilation system upgrades; physical barriers such as sneeze guards; facilities expansion (indoor and outdoor); onsite and remote health screening capabilities; PPE other equipment facilities enhancements as determined by HHS and Secretary of Labor. NOTE: Residential realty and intangible property are specifically excluded.

Consolidated Appropriations Act of 2021

Request Increase in PPP1 Forgiveness Amount	Allows borrowers, who have <i>not</i> received forgiveness, to reapply for the maximum amount applicable under the revised definitions of forgivable costs on their PPP1 loan. The SBA must release guidelines regarding this process by January 13, 2021 (17 days after enactment).
EIDL Advance	EIDL Advances no longer reduce the forgiveness amount and expenses paid with EIDL Advance dollars are deductible. Furthermore, borrowers will be made whole if EIDL Grant amounts were deducted from the forgiveness amount (Section 331)
EIDL Loans	Borrowers may receive an EIDL and PPP2 loans; however, the EIDL funds may not be used for forgiven expenses. (Section 341)
Covered Period	Employer can select a Covered Period that ends between 8 and 24-weeks after the date the loan funds were disbursed (“Loan Origination Date”) (Section 306)
Payroll Expenditure Requirement	At least 60% of loan proceeds must be spent on payroll costs (e.g. cash wages and employer’s portion of health insurance, unemployment insurance and retirement)
Loan Application Period	PPP2 loan application period ends March 31, 2021
Interest Rate	1%? Non-compounding (Section 339)
Loan Term	5 years (6-month deferment of payments)?
Loan Fees	None
Prepayment Penalties	None
Personal Guarantee	None
Tax Treatment	Expenses paid with PPP1 or PPP2 funds are deductible ¹⁰
Simplified Loan Forgiveness Application	Simplified, one-page loan forgiveness application for loans under \$150,000 ¹¹ (Section 307)

¹⁰ Section 276 of the COVID-related Tax Relief Act of 2020

¹¹ One-page form will include 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. The borrower must also attest that the borrower accurately provided the required certification and complied with PPP loan requirements. Borrowers are required

Consolidated Appropriations Act of 2021

FTE and Wage Reduction Safe Harbors Retained	Existing safe harbors on restoring FTE and wage reductions in excess of 25% are extended. Safe harbor restorations must occur by the last day of the PPP2 loan covered period. (Allows SBA and Treasury to modify this period to be consistent with the purpose of the PPP.)
Technical Clarifications	<ul style="list-style-type: none"> • Requirement for employees earning \$100,000 during the applicable period refers to a prorated annualized basis during the period it was paid. <i>(Section 344)</i> • Extends CARES Act waiver of Women/s Business Center matching funds requirement through June 30, 2021 <i>(Section 345)</i> • Small Business Act (see Section 1103(b) of the CARES Act) are in addition to PPP1 or PPP2 loans <i>(Section 346)</i>

to retain relevant records related to employment for four years and other records for three years. This one-page form can also be used for PPP1 loans of not more than \$150,000.

Emergency Sick and Emergency Family Leave Benefit under the Family First Coronavirus Response (FFCRA) Benefits COVID-related Tax Relief Act of 2020 (Sections 286-288)	
COVIDTRA extends, but does not expand, the leave benefits and tax credits offered under the FFCRA	
Extended Expiration Date	FFCRA Emergency Sick Leave and Family Leave benefits and tax credits are extended through March 31, 2021. (previously expired December 31, 2020)
Extension is Optional	Employers are not required to offer Sick and Family Leave benefits after December 31, 2020.
No Additional Benefits	The extension does not provide additional Sick or Family Leave benefits. It only extends the time-period in which benefits can be used.
Self-Employed Individuals	Self-employed individuals may elect to use their average daily self-employment income from 2019 rather than 2020 to compute the credit. This provision is effective as if included in FFCRA.

Employee Retention Credit (ERC) Taxpayer Certainty and Disaster Tax Relief Act of 2020	
Amount of Credit	Maximum credit is 70% of up to \$10,000 of “Qualifying Wages” paid per employee per calendar quarter through June 30, 2021. (Maximum 2021 credit is \$14,000 per employee.) (Section 207)
“Qualifying Wages”	For employers with 500 or fewer employees, credit can be taken for wages paid to employees who are performing work. Larger employers may only receive the credit for wages paid to employees who are not working (performing services). An employee’s wages include group health plan expense not included her/his gross income but allocated to such employee (e.g. employer-paid health insurance, FSA, HSA, etc.) Payroll paid with PPP funds don’t qualify as “qualifying wages” (no double-dipping) (Section 206)
Pay Raises	Repealed the disallowance of the credit for pay increases. now allowing the credit for hazardous duty pay increases and others
Qualifying Employers (Gross Receipts Test)	<ul style="list-style-type: none"> Gross receipts¹² must have declined at least 20% from same quarter in 2019. Employers who were not in business in 2019 qualify if revenue for current calendar quarter declined 20% or more as compared to same quarter in 2020. Alternate Gross Receipt Test: For 2021, employers can elect to look at the immediately preceding calendar quarter and compare that quarter to the corresponding quarter in 2019.¹³ (Section 207)
Limit on Advanced Refunds	<ul style="list-style-type: none"> Employer must have 500 or fewer employees Refund amount cannot exceed 70% of average quarterly wages paid in 2019
Participation in PPP1 or PPP2	Under the modified rule, employers can claim the employee retention credit on any eligible wages not used to support PPP loan forgiveness and any wages that could count toward both provisions can be applied to either, but not both, at the election of the employer. ¹⁴

¹² **PLANNING QUESTION:** It is unclear how and when PPP1 loan forgiveness will be counted as part of “gross receipts”. The timing will affect the organization’s ability to pass the 20% gross receipts reduction test.

As with PPP2 loans, gross receipts of a tax-exempt entity include all amounts treated as gross receipts under Section 6033 of the Tax Code. Translated to “English”, gross receipts include all income the organization receives with no offsets for related costs. (See IRC Reg 1.6033-2(g)(4)).

¹³ For example, an employer who fails the gross receipt test in Q1 of 2021 could still qualify in Q1 by electing to compare gross receipts in Q4 of 2020 to Q4 of 2019. If gross revenue declined by more than 20% quarter-over-quarter, Q1 of 2021 will be an eligible quarter. It is unclear if this election can be made quarterly or is permanent.

Planning Opportunity: A company that receives a PPP loan is no longer prohibited from claiming the employee retention tax credit. This change is retroactive and applies to wages paid after March 12, 2020. As a result, a company that received a PPP loan in 2020 and paid qualified wages in excess of the amount of the forgiven PPP loan should be able to file amended employment tax returns to claim the credit. Furthermore, companies related to a PPP borrower that did not claim the credit because an affiliated company received a PPP loan should also be able to file amended employment tax returns to claim the credit, if they were otherwise eligible to do so. Companies that did not claim the credit due to a PPP loan should review the credit requirements to determine if they might be eligible to claim the credit for qualified wages paid after March 12, 2020. This can happen as the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act retroactively expands PPP forgivable costs. This results in certain nonpayroll expenditures being treated as expenses eligible to support loan forgiveness. By reallocating PPP dollars to non-payroll costs, borrowers can expand the opportunity to claim retention credits.

However, as noted above, we don't know how/when the nontaxable PPP loan forgiveness income will impact the 50% and 20% gross receipt reduction tests. Hopefully, the SBA and Treasury will provide guidance soon.

EIDL Loans and Advances Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Division N, Title III: Continuing the Paycheck Protection Program and Other Small Business Support	
Emergency EIDL Loans and Advances Extended	Extend covered period for Emergency EIDL grants through December 31, 2021
EIDL Advances and PPP Loans	As noted above, EIDL Advances no longer reduce the forgiveness amount and expenses paid with EIDL Advance dollars are deductible (Section 278)
Targeted EIDL Advances	Entities who: <ul style="list-style-type: none"> • Are located in low-income communities • Experienced a 30% decline in revenue over an 8-week period in 2020 as compared to the same period in 2019 • Qualify for a Section 7(b)(2) Small Business Act Loan under CARES Act Section 1110(b) Are eligible to receive a grant: <ul style="list-style-type: none"> • Equal to what the entity received under the CARES Act and \$10,000 • For the full \$10,000 if the applicant did not receive a grant because the funding ran out.

Expanded Unemployment Benefits Division N – Additional Coronavirus Response and Relief Title II, Subtitle A – Unemployment Insurance	
\$300/week Federal Supplement	Adds \$300 per week on top of state benefits paid after December 26, 2020,
Excluded Employees	Employees who are receiving unemployment benefits while you qualify for Sick or Family leave.
Benefits Extension	Federal Pandemic Emergency Unemployment Compensation (CARES Act Section 2017) and Pandemic Unemployment Assistance (CARES Act Section 2102) benefits are extended until March 13, 2021, with a three-week phase out for benefits on claims that haven't reached the 24-week cap. ¹⁵
Retroactive Benefits	Limits retroactivity for additional \$300 benefit to payments due after December 1, 2020
Filing Requirements	Employees claiming PUA benefits (CARES Act Section 2102) inability to work or partial unemployment is attributable to one or more of the COVID-19 reasons (e.g., COVID-19 related: illness; care; school/day care closure; breadwinner death, etc.)

¹⁵ COVIDTRA extends PUA (CARES Section 2102) PEUC (CARES Section 2107) through 3/14/2021 however, individuals receiving PEUC who have not exhausted their benefits by March 14, 2021 will continue to receive benefits until the earlier of: (i) the date their benefits expire; or, (ii) April 5, 2021. (COVIDTRA Section 206(a)(2)). NOTE: Dept of Labor UIPL 9-21 states that if the State ends it benefit week on a Saturday, as does Michigan, the date is March 13th, not Sunday the 14th.

Miscellaneous Business Provisions	
Student Loan Reimbursement	<ul style="list-style-type: none"> • Extends tax exempt tuition reimbursement programs to student loan repayments under section 127 through January 1, 2026 • Repayments are still subject to the annual limit of \$5,250 combined with any tuition reimbursement made on behalf of the employee.
Healthcare and Dependent Care FSAs	<ul style="list-style-type: none"> • Health and dependent care FSAs with plan years with plan years ending in 2020 can amend their plans to allow unused balances to carry-over into the 2021 plan year. The same will apply for 2021 plan year going into 2022. • Healthcare FSAs with grace periods ending in 2020 or 2021 can be amended to extend the grace period to 12 months after the end of the plan year and permit post-termination reimbursements for employees who terminate participation in the plan
Deferral of Employee Social Security Tax	The Act extends the repayment deadline for repayment of the employee-portion of SS and Medicare taxes from April 30, 2021 to December 31, 2021.
100% Business Meal Deduction	100% of business meals deductible where the food and beverages are provided by a restaurant, and the expenses are paid or incurred between Jan. 1, 2021 and Dec. 31, 2022.
Work Opportunity Tax Credit (WOTC)	The WOTC is available to employers that hire individuals from certain targeted groups. This was set to expire on Dec. 31, 2020 but has now been extended until Dec. 31, 2025.
EIDL Loan Deadline Extended	EIDL loan applications will be accepted through December 31, 2021
Paid Family and Medical Leave Credit	The paid family and medical leave credits provided under IRC Section 45S has been extended so that it covers FMLA wages paid through 2025. This benefit is separate from the FFCRA Emergency Sick Leave and Family Leave benefits discussed above.
Emergency Financial Aid, Shuttered Venture Grants and EIDL Advances and Loan Subsidies	Amounts received under these programs are excluded from gross income. Furthermore, amounts received under these programs and any expenses paid with such funds are deductible. (COVIDTRA Sections 277, 278)