Paycheck Protection Program Guide

March 2021

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EXECUTIVE SUMMARY

In March 2020, Congress passed the Coronavirus Aid, Relief and Economic Security Act (CARES Act) which added a temporary program called the **Paycheck Protection Program (PPP)** to the loan programs administered by the Small Business Administration (SBA). PPP loans were created to provide economic relief to small businesses nationwide that were adversely impacted by COVID-19 and are available to religious organizations. PPP loans were originally only available from February 15, 2020 through June 30, 2020, but the Paycheck Protection Program Flexibility Act, passed in June 2020, extended the deadline to December 31, 2020.

On December 27, 2020 the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the Economic Aid Act), was passed as part of the Consolidated Appropriations Act. The Act included the following:

- PPP loans can be made through March 31, 2021,
- Second Draw PPP loans were created so that the hardest hit borrowers are eligible for another forgivable PPP loan, and
- Other revisions were put in place for First Draw PPP Loans.

PPP loans are fully guaranteed by the SBA. A borrower obtains a PPP loan by applying through a local bank authorized to process PPP loans. The application forms and procedures are simple and streamlined. Funds are available very quickly for most borrowers.

ELIGIBILITY

First Draw Loans (for first time recipients)

Most nonprofit organizations with fewer than 500 employees are eligible to apply for a First Draw PPP Loan between February 15 and March 31, 2021 if they did not receive a loan in 2020. Select nonprofit organizations with more than 500 employees may qualify if the organization has an employee headcount lower than the employee size standard, if any, under the applicable North American Industry Classification System (NAICS) code. All employees are counted, whether full or part-time.

In evaluating eligibility for such loans, lenders are to consider: (1) whether the borrower was operational on February 15, 2020, and (2) whether the borrower had employees for whom it paid salaries and payroll taxes at that time. For seasonal businesses, such as summer camps, the lenders are to consider operations for an eight-week period between February 15, 2019 and June 30, 2019.

The borrower must submit documentation to its bank sufficient to establish eligibility and to demonstrate the qualifying payroll amount which may include, as applicable, payroll records, payroll tax filings and documentation of health and retirement plan expenses.

In order to determine if an organization meets the size limitation, the SBA has affiliation rules that count different entities as one employer if one business controls or has the power to control another business, or when a third party controls or has the power to control both businesses. These affiliation rules generally will be applied to nonprofit organizations to determine eligibility in the same way they are applied to small businesses. However, an SBA interim final rule states: "The relationship of a faith-based organization is not considered an affiliation with the other organization under this subpart if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion."

Furthermore, another SBA interim final rule related to the Economic Aid Act states that "a faith-based organization seeking loans under this program may rely on a reasonable, good faith interpretation in determining whether its relationship to any other person, group, organization, or entity is exempt from the affiliation rules under this provision, and the SBA will not assess, and will not require participating lenders to assess, the reasonableness of the faith-based organization's determination."

Second Draw Loans

Second Draw PPP Loans are available to borrowers that meet all of the following criteria:

- Have 300 or fewer employees,
- Experienced a revenue reduction of 25% or greater in 2020 relative to 2019, and
- Previously received a First Draw PPP Loan and has used, or will use, the full amount of the First Draw PPP Loan for authorized purposes on or before the expected date of disbursement of the Second Draw PPP Loan.

There are two ways in which a borrower may be able to show the revenue reduction:

- Any borrower can compare its quarterly gross receipts for one quarter in 2020 with the borrower's gross receipts for the corresponding quarter in 2019. If there was at least a 25% reduction in at least one quarter, the borrower meets this requirement, or
- If a borrower was in operation for all four quarters in 2019, the borrower can meet the revenue reduction requirement by showing a reduction in annual receipts of 25% or greater in 2020 as compared to 2019 and submitting copies of its annual tax returns substantiating the revenue decline.

Forgiven amounts of a First Draw PPP Loan that a borrower received in 2020 are excluded from a borrower's gross receipts.

For loans with a principal amount greater than $150,000, the borrower must submit documentation adequate to establish the revenue reduction of 25% or more. This documentation may include tax forms, quarterly financial statements, or bank statements. For loans with a principal amount of $150,000 or less, such documentation is not required at the time the borrower submits the application of the loan, but must be submitted on or before the date the borrower applies for loan forgiveness. If forgiveness is never required, the borrower must provide the documentation upon the SBA's request.

For more guidance on what qualifies as gross receipts please see the guidance issued by the SBA and Treasury on the topic **here**.

Religious Organizations

This law is also specific in stating that churches and religious organizations are eligible for First and Second Draw PPP loans. In doing so it confirmed the interim final rule published on April 15, 2020 by the SBA.

An organization that receives a PPP loan cannot be federally obligated to take actions that conflict with its religious beliefs. The guidance states that these loans will be made consistent with constitutional, statutory and regulatory protections for religious liberty. Moreover, the SBA Interim Final Rule states that "for purposes of the PPP, SBA regulations do not bar a religious nonprofit entity from making decisions with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such nonprofit of its activities."

BORROWING LIMITS

First Draw Loans

The CARES Act appropriated $349 billion for loans under this program. The maximum amount available to any borrower in a First Draw Loan was 2.5 times its average monthly payroll costs over the year prior to the making of the loan, excluding any annual compensation above $100,000 for any person, prorated for February 15 through June 30, 2020. The maximum loan amount for any one borrower was $10 million.

Second Draw Loans

A ministry that is eligible to receive a Second Draw PPP Loan can borrow an amount equal to 2.5 times its average monthly payroll costs up to $2 million with the same exclusions on payroll for high earners. The total of the first and second PPP loans added together cannot exceed $10 million.

PAYROLL COSTS

Definition

Payroll costs consist of compensation to employees (whose principal place of residence is in the United States) in the form of:

- Salary, wages, commissions, or similar compensation;
- Cash tips or the equivalent;
- Payment for vacation, parental, family, medical or sick leave;
- Allowance for separation or dismissal;
- Payment for the provision of employee benefits consisting of group health care or group life, disability, vision or dental insurance, including insurance premiums (this was a change added by the Economic Aid Act as the CARES Act excluded life, disability, vision, or dental insurance);
- Retirement benefits; and
- Payment of state and local taxes assessed on compensation of employees.

Specifically excluded from the definition of payroll costs are:

- Compensation of an employee whose principal place of residence is outside of the United States;
- Compensation of an individual in excess of $100,000 on an annualized basis, as prorated for the period during which the payments are made or obligation incurred;
- Federal employment taxes imposed or withheld during the applicable period, including the employee's and employer's share of FICA taxes and income taxes required to be withheld from employees; and
- Qualified sick and family leave wages as allowed under the Families First Coronavirus Response Act.

Please note that independent contractors do not count as employees for PPP loan purposes.

Applicable Time Period When Applying

PPP loans approved in 2020 used either 2019 or the one-year period before the date on which the loan was made to calculate payroll costs and the maximum loan amount. Borrowers who apply for PPP loans in 2021 and who are not self-employed are also permitted to use the one-year period before the date on which the loan is made to calculate payroll costs, or they can choose to use calendar year 2019 or 2020 (the remainder of this article will refer to calendar years 2019 or 2020 for ease).

How to Calculate the Maximum Amount the Ministry can Borrow

1. Determine aggregate payroll costs defined above from 2019 or 2020 for employees whose principal place of residence is the United States.
2. Subtract any compensation for any employee in excess of $100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred.
3. Calculate average monthly payroll costs by dividing the amount in step 2 by 12.
4. Multiple the average monthly payroll costs from step 3 by 2.5.
5. Add in any outstanding amount of an Economic Injury Disaster Loan made between January 3, 2020 and April 3, 2020 that you want to refinance. There is no need to include any amount of the $10,0000 "advance" under the EIDL COVID-19 loan because it does not have to be repaid.

How to Prove Payroll Costs

You must provide your quarterly Form 941 from each quarter in 2019 or 2020 (whichever you used to calculate the loan amount), or equivalent payroll records, along with any statements from CPS regarding payments for the Concordia Health Plan, Concordia Retirement Plan, Concordia Retirement Savings Plan 403(b) employer match, and the Concordia Disability and Survivor Plan, as these count in computing average monthly payroll. You must also provide a payroll statement or similar document from the pay period covering February 15, 2020 to prove you were in operation at that time.

CERTIFICATIONS ON APPLICATION TO BORROW

An authorized representative must certify in good faith to the following:

1. Applicant was in operation on February 15, 2020, has not permanently closed, and was either:
    a. an eligible self-employed individual, independent contractor, or sole proprietorship with no employees, or
    b. had employees for whom it paid salaries and payroll taxes.
2. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant. Note: There is a safe harbor providing that any borrower that received PPP loans with a principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.
3. Funds will be used for authorized purposes and if funds are knowingly used for unauthorized purposes the federal government may hold the applicant legally liable, such as for charges for fraud.
4. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, covered utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures, and not more than 40% of the forgiven amount may be for non-payroll costs. See below for definitions of these types of costs.
5. Other certifications regarding who has a controlling interest, securities, and the truth and accuracy of the information and documents contained in the application.

TERMS

First Draw Loans

First Draw Loans are subject to the following terms:

- The loans are 100% guaranteed by the SBA;
- No collateral will be required;
- No personal guarantees will be required;
- The interest rate is 1%, calculated on a non-compounding, non-adjustable basis;
- The loan matures no later than five years after the determination of the amount, if any, to be forgiven (originally the First Draw Loans were to mature in two years, but this was extended to five years by the Paycheck Protection Program Flexibility Act); and
- The loans are forgivable upon appropriate application.

Second Draw Loans

Second Draw PPP loans are generally guaranteed by the SBA under the same terms, conditions and processes as First Draw PPP Loans. The SBA guarantees 100% of the Second Draw PPP Loans and may forgive the full principal loan amount.

USE OF FUNDS

PPP loan proceeds may be used for:

- Payroll costs as defined above;
    - At least 60% of the PPP loan must be used on payroll costs for full loan forgiveness
    - Bonuses and hazard pay to employees and salary/wage payments to furloughed employees during the covered period are eligible for loan forgiveness
- Costs related to the continuation of group health care, life, disability, vision or dental benefits during periods of paid sick, medical, or family leave;
- Group health care, life, disability, vision or dental insurance premiums;
- Mortgage interest payments for mortgage entered into before February 15, 2020, but not mortgage prepayments or principal prepayments;
- Rent payments on leases dated before February 15, 2020;
- Utility payments for service that began before February 15, 2020;
- Interest on debt that existed as of February 15, 2020;
- Refinancing of an SBA Economic Injury Disaster Loan made between January 31, 2020 and April 3, 2020;
- Covered operations expenditures (see below);
- Covered property damage costs (see below);
- Covered supplier costs (see below); and
- Covered worker protection expenditures (see below).

Covered Operations Expenditure: A covered operations expenditure is any money your ministry spent on business software or cloud computing services that:

- facilitates business operations, product or service delivery;
- facilitates the processing, payment or tracking of payroll expenses;
- performs human resources, sales or billing functions; and/or
- maintains accounting or tracking of supplies, inventory, records and expenses.

Covered Property Damage Costs: Covered property damage costs are costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 and were not covered by insurance or other compensation.

Covered Supplier Costs: A supplier cost is an expenditure made by a ministry to a supplier pursuant to a contract, purchase order, or order for goods that was in effect prior to taking out the loan and that is essential to the ministry's operations at the time at which the expenditure was made. Supplier costs of perishable goods can be made before or during the life of the loan.

Covered Worker Protection Expenditures: A covered worker protection expenditure is any operating or capital expense required to adapt the business activities of the entity to requirements or guidance issued by the Department of Health and Human Services, the Centers for Disease Control or OSHA in order to maintain sanitation standards, social distancing, or any other worker or customer safety requirement related to COVID-19. The cost also must have been incurred during the COVID-19 national emergency declared by the President.

Examples include creating, maintaining or renovating a drive through, ventilation or filtration system; sneeze guards; onsite or offsite health screening capabilities; and personal protection equipment. These expenditures do not include the costs of any real property such as land or buildings.

Misused Funds: if you use PPP funds for unauthorized purposes, the SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud.

LOAN FORGIVENESS

The full amount of the principal and any accrued interest on a PPP loan may be forgiven in full. The borrower must use all of the loan proceeds for forgivable purposes and employee and compensation levels must be maintained (or an applicable safe harbor or exemption applies) during the Loan Forgiveness Covered Period. All payroll and non-payroll costs are eligible for forgiveness if paid during the Loan Forgiveness Covered Period; or incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the Loan Forgiveness Covered Period.

The "Loan Forgiveness Covered Period" is the period beginning on the date the lender disburses the PPP loan funds and ending on any date selected by the borrower that occurs during the period **between 8 and 24 weeks** after the date of disbursement. Because the Economic Aid Act changed the Loan Forgiveness Covered Period from either an 8 or 24 week period to a covered period between 8 and 24 weeks at the election of the borrower, the SBA eliminated the "alternative covered period" as defined in the interim final rule published on June 1, 2020.

Note: Payroll costs that are qualified wages taken into account in determining the Employer Retention Credit are NOT eligible for forgiveness.

How to Receive Full Loan Forgiveness:

A borrower must use at least 60% of the PPP loan for payroll costs. An application for forgiveness must also be submitted in a timely manner. If you submit a loan forgiveness application to your lender within 10 months after the end of your Loan Forgiveness Covered Period, you will not have to make any payments of principal or interest on your loan before the date on which the SBA forgives the loan or notifies your lender that total forgiveness is not allowed. If you do not submit a loan forgiveness application to your lender within 10 months after the end of your Loan Forgiveness Covered Period you must begin paying principal and interest after that period.

Reductions in Forgiveness Based on Employee Count and/or Compensation:

Your loan forgiveness will be reduced if the average number of full-time equivalent employees per month during the Loan Forgiveness Covered Period is less than the average number of full-time equivalent employees per month during the "benchmark period." The benchmark period can be either: 1) February 15 to June 30, 2019, or 2) January 1 to February 29, 2020. You, as the borrower, get to decide which time period will be used as the benchmark, unless you have been determined by the SBA to be a seasonal employer, in which case your benchmark period is either of the preceding periods or any consecutive 12-week period between February 15, 2019 and February 15, 2020.

Also, for purposes of PPP loan forgiveness, if you reduce the wages of workers earning less than $100,000 annually by more than 25%, as measured against the most recent full quarter before the Loan Forgiveness Covered Period, the amount in excess of that 25% reduction will also reduce the amount of your loan forgiveness.

However, a borrower's loan amount that is eligible for forgiveness will not be reduced due to the following:

- A reduction in the number of full-time equivalent staff if the borrower cannot hire back the same employee or a suitable replacement, or
- A demonstrated inability to return to the same level of business activity as the business was operating prior to February 15, 2020. This must be due to compliance with requirements or guidance issued by The Department of Health and Human Services, The Centers for Disease Control or OSHA between March 1 and the last day of your Loan Forgiveness Covered Period related to worker or customer safety, or
- The borrower both:
    1. reduced its FTE count or compensation beginning February 15, 2020 and ending April 26, 2020; and
    2. the borrower then restored its FTE employee count and/or compensation to its FTE employee levels in the borrower's pay period that included February 15, 2020 not later than:
        a. December 31, 2020 for a PPP loan made before December 27, 2020, or
        b. The last day of the Loan Forgiveness Covered Period, for a PPP loan made after December 27, 2020.

In order to avoid the FTE (full time employee) reduction, follow these steps:

- Make a good faith written offer to rehire individuals who have been laid off (or restore reduced hours) for the same salary/wages and number of hours as the last pay period prior to the separation or reduction in hours.
- If the offer is rejected, maintain records documenting both the offer and the subsequent rejection.
- Inform the applicable state unemployment office of the rejected offer within 30 days of rejection.

Note: Employers that received loans of $50,000 or less and use loan forgiveness application 3508S are not subject to these penalties.

Loan Forgiveness Applications:

There are three different applications that an employer can use to apply for PPP loan forgiveness. Read more about the different types, determine which one your organization should use and link directly to the applications **here**.

Forgiveness will initially be determined by the bank that gave you the loan, but the borrower must retain the application and all related documents for six years. The Small Business Administration can review the loan and forgiveness at any time for six years from the date of forgiveness or full loan repayment.

You can access additional information about PPP loans at **ConcordiaPlans.org**.