

PPP Loan Update and Second Draw Process

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Jef Fagan, NECA General Counsel

The Small Business Administration, along with the Department of the Treasury, released updated information and guidance related to the Paycheck Protection Program (PPP), specifically the “second draw loans” recently established by Congress.

The full release and guidance can be found [here](#).

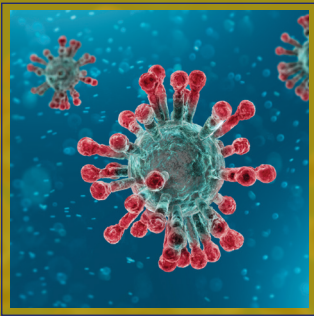
While NECA strongly encourages its members to work directly with their lenders and legal counsel on determining eligibility and loan amounts, the following summary assisted by our friends at [Lanigan, Ryan, Malcom and Doyle, P.C.](#) is very helpful and informative.

Changes to Original PPP Loan and Process

- The last day to apply for and receive a PPP loan (original or “Second Draw”) is March 31, 2021.
- New borrowers can use 2019 or 2020 for purposes of calculating their maximum loan amount.
- Loan forgiveness covered period is the period beginning on the date the lender disburses the PPP Loan, and ending on any date selected by borrower between 8 and 24 weeks after date of disbursement.
- Eligible entities now include: Section 501(c)(6) organizations, destination market-organizing organizations, and certain news organizations.
- For 501(c)(6) orgs, they qualify as long as:
 - ◆ Does not receive more than 15% of its receipts from lobbying activities;
 - ◆ Lobbying activities of the organization do not comprise more than 15% of the total activities of the organization;
 - ◆ Cost of the lobbying activities of the organization did not exceed \$1m during the most recent tax year of the organization that ended prior to Feb 15, 2020; and
 - ◆ The organization does not employ more than 300 employees.
- In addition to payroll, rent, mortgage interest and utility expenses, PPP loans can now be used for:
 - ◆ covered operations expenditures—payments 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—costs 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.



1201 Pennsylvania Ave. NW
Suite 1200
Washington, D.C. 20004
202-991-6300 • www.necanet.org

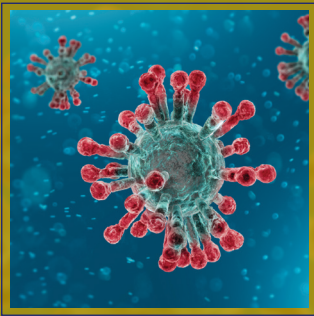


- ◆ covered supplier costs—expenditures made by a borrower to a supplier of goods for the supply of goods that are essential to the operations of the borrower at the time at which the expenditure is made; and is made pursuant to a contract, order, or purchase order—(i) in effect at any time before the 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—operating or a capital expenditures 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 with respect to the 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.
- The Economic Injury Disaster Loan (EIDL) Advance Amount received by the borrower will not reduce the amount of forgiveness to which the borrower is entitled and will not be deducted from the forgiveness payment amount that SBA remits to the lender.
 - Any EIDL Advance Amounts previously deducted from a borrower's forgiveness amount will be remitted to the lender, together with interest to the remittance date.
 - If a partnership received a PPP loan that did not include any compensation for its partners, they can request that their original PPP loan amount be increased to include appropriate partner compensation.
 - PPP borrowers who can reapply or request an increase in their PPP loan amount:
 - ◆ If a borrower returned all of a PPP loan, the borrower may reapply for a PPP loan in an amount the borrower is eligible for under current PPP rules.
 - ◆ If a borrower returned part of a PPP loan, the borrower may reapply for an amount equal to the difference between the amount retained and the amount previously approved.
 - ◆ If a borrower did not accept the full amount of a PPP loan for which it was approved, the borrower may request an increase in the amount of the PPP loan up to the amount previously approved.

Second Draw of PPP Money

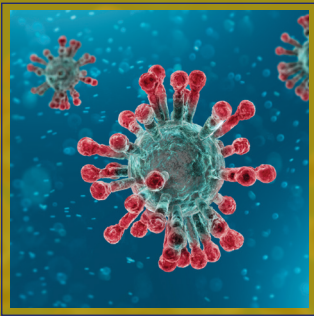
- Eligibility:
 - ◆ Available to borrowers that previously received a PPP loan and have used or will use the full amount of the initial PPP loan for authorized purposes on or before the expected date of the disbursement of the "Second Draw PPP Loan";
 - ◆ Has 300 or fewer employees; and
 - ◆ Experienced a revenue reduction in 2020 relative to 2019.





- This is calculated by comparing the borrower's quarterly gross receipts for one quarter in 2020 with the borrower's gross receipts for the corresponding quarter of 2019.
- If borrower was in operation all four quarters of 2019, they could also meet this requirement if it experienced a reduction in annual receipts of 25% or greater in 2020 compared to 2019.
- Gross receipts include all revenue in whatever from received or accrued (in accordance with the entity's accounting method) from whatever source including:
 - ◆ Sale of products or services
 - ◆ Interest
 - ◆ Dividends
 - ◆ Rents
 - ◆ Royalties
 - ◆ Fees/commissions
 - ◆ Reduced by returns and allowances
- Gross receipts do not include:
 - ◆ any forgiveness amount from original PPP loan
 - ◆ taxes collected for and remitted to a taxing authority if included in gross or total income
 - ◆ proceeds from transactions between its domestic or foreign affiliates (special rules for companies that were acquired/acquiror)
- Maximum loan is lesser of 2.5 months of borrower's average monthly payroll cost or \$2m.
 - ◆ Calculated in the same manner as original PPP
 - ◆ Can use 12-month period prior to when the loan is made (i.e. 2020) or calendar year 2019.
- Businesses that are a part of a single corporate group cannot receive more than \$4M of Second Draw PPP Loans in the aggregate.
- Loan terms are same as original PPP loan:
 - ◆ SBA guarantees the loan
 - ◆ No collateral required
 - ◆ No personal guarantees required
 - ◆ Interest rate is 1% calculated on a non-compounding, non-adjustable basis
 - ◆ Maturity is five years
- Affiliation rules still apply.
- Must submit to the lender SBA Form 2483-SD including the required certification and proper documentation.
 - ◆ If using same lender as original PPP loan and using same calendar year (i.e. 2019) for determining loan amount as original PPP, then no need to resubmit payroll documentation.





NECA Legal Alert: **PPP Loan Update and Second Draw Process**

- ◆ If loan is less than 150k, then applicant does not need to submit documentation when applying for loan but will need to do so when applying for forgiveness.
- As with most of the COVID-19 legislation and regulation, additional guidance is likely forthcoming. NECA will update its resources as necessary. Please seek competent legal advice for assistance with any specific factual scenarios.

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