

# Welcome!

## Payroll Protection Program Round 2: Critical Information and Advice You Can Use

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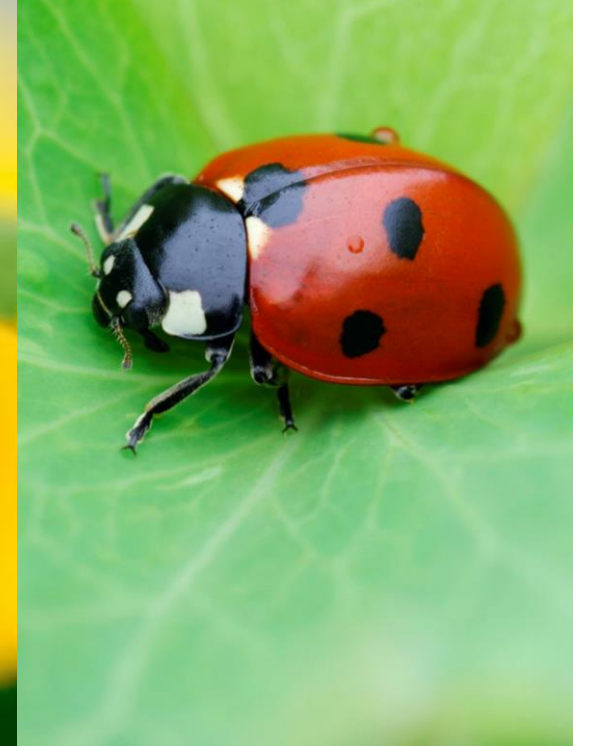


# Payroll Protection Program: Round Two

## ***The Sequel***

Presented by Bryon Garrety, Garrety & Associates CPAs

# PPP Round 1 vs. Round 2



# Documentation

- We strongly recommend documenting all transactions regarding funds used from your PPP Loan
- Document your reasoning in applying for a PPP Loan, to help justify and support your certification
- It's best to do this now, while the application process is fresh in your memory
- Save all documentation should you need it later
- You need your financial statements. You need your CPA. You need your banker.

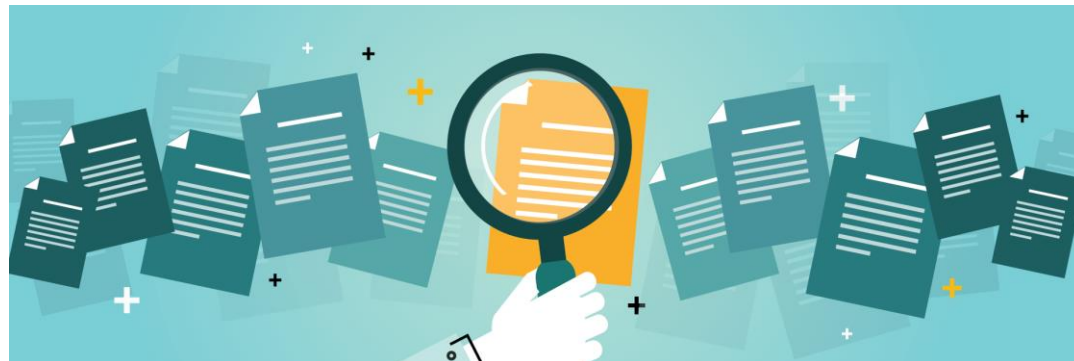


Photo credit: [Software Brothers](#)

# Was PPP Borrowing Appropriate?

*According to SBA Form 2483 certification:*

"Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant"

# Necessity Safe Harbor

*According to SBA Loan FAQ 46:*

“Any borrower that, together with its affiliates, received **PPP loans with an original principal amount of less than \$2 million** will be deemed to have made required certification concerning the necessity of the loan request in good faith”

# What is a “necessity?”

*According to the U.S. Supreme Court (Welch v.s. Helvering 1933):*

Necessary = appropriate and helpful

# What makes it a “necessity?”

*According to SBA Loan FAQ 31 and 37:*

**Q:** *“Do businesses with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?”*

**A:** Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere, borrowers still must certify in good faith that their PPP loan request is necessary.

- *Before submitting the application, borrowers should carefully review the required certification that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”*
- *Borrowers must make this certification in good faith, considering their current business activity and ability to access other sources of liquidity sufficient to support their ongoing operations in a manner not significantly detrimental to the business.*



# Consolidated Appropriations Act 2021 (ConApp)

## ***Necessity Requirement***

*To receive a Round 2 PPP Loan, the borrower must satisfy the “necessary test:”*

1. Ask whether the business will survive without the loan
2. Create a timeline of all that could possibly go wrong and ask whether business could weather those storms
3. Determination should be made with assistance of competent legal counsel and accountant
4. It's easier for a struggling corporation to meet than a sole proprietorship with considerable net worth
- 5. Necessity test was never fully defined**

# Necessity Letter

Dear Mr. Jones,

We here at Best Banc are always interested in supporting our customer in great times and in less than great times. I appreciate you taking the time to go over your financial position with me and found the discussion with you over market concerns and the impact of the COVID-19 virus on your business telling.

I have reviewed your financial statements for 2019 and 2020 along with banking details including your average daily balance and the volume and timing of deposits you keep in this institution. Your financial statements in comparing the two years show some growth year to year. 2020 has a slightly higher profit than 2019. After discussion with you and a more detailed review the change in profitability is the result of cost cutting measures you and your management team have taken in response to the virus. Gross revenue for your business was flat on the year to year comparison. Your business through 2020 is still healthy; however, the service nature of your business and your customer base has had a dramatic impact from the COVID-19 pandemic. My concern is not with 2019 or 2020 but rather with the first 6 months of 2021. In your business and in other similar business I have seen average daily balances and deposits volumes decline in December 2020 and January 2021. Our analyst at the bank predict continued decline in your market through the mid part of 2021. It appears the more sever part of the storm my still lay ahead for your business.

It is for this reason I believe a prudent business owner would access the current federal aid program to help ensure the necessary capital is in the business to weather the projected downturn.

All my best,

Matt Banks

# Consolidated Appropriations Act 2021

*What will happen?*



Photo credit: [Britannica](#)

# Consolidated Appropriations Act 2021

## *About the New Act*

- Timeline
  - 12/21/20 - [Passed by House and Senate on Monday](#)
    - Passed House (359-53) and Senate (91-7)
  - **12/27/20** - Signed into law by the President
- Overview
  - **\$284 billion for PPP Round 2**
  - \$2.3 trillion spending bill
  - \$892 billion COVID-19 relief package
  - \$1.4 trillion government funds (through Sept. 2021)
  - 5,593 pages long
- [Click here to read the most recent version of the act \(1/19/21\).](#) [Beware of prior versions.](#)

# Consolidated Appropriations Act 2021

## ***Tax Provisions***

- Economic Impact Payment (EIP): \$600 per person
- Extended Federal Unemployment Benefits:
  - \$300 per person
  - Taxable income is down from \$600 per month
  - Extended from 39 to 55 weeks
- Tax provisions:
  - Charitable contributions \$300 (\$600 MFJ) above line (for 2021)
  - 100% deduction for meals bought at restaurant, take out or delivery (for 2021 and 2022)
  - and many more!

# Consolidated Appropriations Act 2021

## ***Tax Provisions***

- Overturns [IRS Notice 2020-32](#)
  - "...clarifies (that) no deduction is allowed under the Internal Revenue Code for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)...."
- **A forgiven PPP Loan is no longer considered income**
- Allows deductibility of PPP expenses
- Addresses PPP and basis issues (Partnership interest or S-Corp stock)
- Does not address PPP at-risk (§465) issue

# Who is eligible for PPP Round 2?

- ☐ **Loan must be "necessary"**
- ☐ Employs more than 300 employees
- ☐ Has already or will use the full amount of PPP Round 1
- ☐ Can prove a drop of 25% in gross receipts between the same quarter in 2019 v.s. 2020
  - ☐ Can do first, second or third quarter if application was submitted on or after 1/1/20
  - ☐ Must only qualify for one quarter



# Proving a 25% drop in gross receipts between the same quarter in 2019 vs. 2020

Garrety and Associates, CPA's LLC

PPP Second Draw Eligibility Test

Quarterly Gross Receipts

Company:

	Monthly			Quarterly			
	2020	2019		2020	2019	Percent Change	Qualify for Second Draw?
Jan	75,000.00	100,000.00	1st Qtr	225,000.00	300,000.00	-25%	Qualify
Feb	75,000.00	100,000.00	2nd Qtr	228,000.00	300,000.00	-24%	
Mar	75,000.00	100,000.00	3rd Qtr	222,000.00	300,000.00	-26%	Qualify
Apr	76,000.00	100,000.00	4th Qtr	315,000.00	300,000.00	5%	
May	76,000.00	100,000.00		990,000.00	1,200,000.00		
Jun	76,000.00	100,000.00					
Jul	74,000.00	100,000.00					
Aug	74,000.00	100,000.00					
Sep	74,000.00	100,000.00					
Oct	105,000.00	100,000.00					
Nov	105,000.00	100,000.00					
Dec	105,000.00	100,000.00					
	990,000.00	1,200,000.00					

Note: To be eligible for the PPP second draw, at least one 2020's quarterly gross receipts must have decreased by 25% or more from the corresponding quarter in 2019.



# Consolidated Appropriations Act 2021

## Restaurants



- **100% deduction for meals and beverages at restaurants in 2021 and 2022**
- The maximum loan amount for a second draw PPP loan is equal to the lesser of 2.5 (or 3.5 for restaurant and hospitality businesses with NAISC code 72) multiplied by the borrower's average monthly payroll costs or \$2 million.

# Types of businesses covered under NAISC Code 72

- Accommodation and Food Services
- Accommodations
- Traveler Accommodation
- Hotels and Motels
- Casino Hotels
- Bed-and-Breakfast Inns
- RV Parks and Recreational Camps
- Rooming and Boarding Houses,  
Dormitories, Workers Camps
- Food Services and drinking places
- Special Food Services
- Food Service Contractors
- Caterers
- Mobile Food Services
- Drinking Places (Alcoholic Beverages)
- Full-Service Restaurants
- Limited-Service Restaurants
- Cafeterias, Grill Buffets, Buffets
- Snack and Non-alcoholic Beverage Bars



# Consolidated Appropriations Act 2021

## *501(c)(6) organizations*



Photo credit: [NOLA.com](https://www.nola.com)

- **Business leagues, chambers of commerce, real estate boards, boards of trade not organized are now eligible**
- Not-for-profit with no earnings inuring to any shareholder or individual
- Sports leagues and lobbyists are not

# Consolidated Appropriations Act 2021

## Round 1 vs. Round 2

	Round 1	Round 2
Deadline to Apply	8/8/20	3/31/21
Dates of Disbursement	4/3/20 - 8/8/20	N/A
Batches of Loan Funding	Two	One
Availability	Funding 4/3/20 - 8/8/20	Funding generally available only if received Round 1
Covered Period Choices	8 weeks or 24 weeks (if funded on or before 6/4/20)  OR  24 weeks (if funded on 6/5/20 or after)	24 weeks  OR  After "spend out" if elected (probably by filing "cut off" app)

# Consolidated Appropriations Act 2021

## Round 1 vs. Round 2

Round 1		Round 2
Covered Payroll	<ul style="list-style-type: none"> <li>Cash comp (gross pay)</li> <li>Group health</li> <li>Employer funded retirement plan</li> <li>SUTA / other state local employment tax</li> </ul>	<p><b>Same</b>, plus group insurance (add in life, disability, vision and dental)</p> <p><u>NOTE:</u> This is available retroactively if haven't gotten forgiveness</p>
Add in expanded group insurance if didn't receive forgiveness as of 12/26/20		Available
Round 1		Round 2
Covered Non-payroll	<ul style="list-style-type: none"> <li>Covered mortgage interest</li> <li>Rent</li> <li>Utilities</li> </ul>	<p><b>Same</b>, plus:</p> <ul style="list-style-type: none"> <li>Covered operations expenditures</li> <li>Property damage costs</li> <li>Supplier costs</li> <li>Worker protection expenditure property</li> </ul>
Expanded covered non-payroll available if didn't receive forgiveness as of 12/26/20		Available

# Consolidated Appropriations Act 2021

## Round 1 vs. Round 2

	Round 1	Round 2
Payroll limited to \$100k	Yes	Stays the same
Group health insurance	Yes	Stays the same
Group insurance expanded to include: <ul style="list-style-type: none"><li>• Life</li><li>• Disability</li><li>• Vision</li><li>• Dental</li></ul>	Not originally  (but it's retroactive if no forgiveness was received on or before 12/27/20)	Yes
	Must be provided by employer and paid for by employer	Must be provided by employer and paid for by employer

# Consolidated Appropriations Act 2021

## Round 1 vs. Round 2

	Round 1	Round 2
Amount Borrowable	2.5x monthly payroll	<b>Same</b> , except for 3.5x monthly payroll for restaurants and accommodations businesses
Loan Cap	Up to \$10 million	Up to \$2 million

# Consolidated Appropriations Act 2021

## *PPP Non-payroll Costs*

- Expanded to include several new categories
- For 100% forgiveness, non-payroll costs **still limited to 40% of covered expense spending**
- **Expansion of definition of non-payroll costs appears to be effective for PPP loans forgiven after date of enactment**
  - Some Round 1 Loans may qualify
  - All Round 2 Loans will qualify



# PPP Round 1 (Prior to Con App 2021)

## Round 1 vs. Round 2

	Source	Use	Forgive
Period	2.5 months		24 (or 8) weeks
Salary (max \$100k)	X	X	X
Employer benefits (i.e. group health insurance expanded, retirement plan contribution, etc.)	X	X	X
Interest (debt < 2/15/20)		X	X
Rent (in force < 2/15/20)		X	X
Utility (service began < 2/15/20)		X	X
Operations expenditure, property damage cost, supplier cost, worker protection expenditure property		X	X
Interest on other mortgages and non-mortgage interest		X	
Other rent and utilities		X	
Other			

# Consolidated Appropriations Act 2021

## ***PPP Round 2***

- **Covered operations expenditure = 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
  - Accounting or tracking of supplies, inventory, records and expenses
- **Covered property damage cost = cost related to:**
  - Property damage and vandalism
  - Looting due to public disturbance that occurred during 2020 that was not covered by insurance or other compensation

# Consolidated Appropriations Act 2021

## ***PPP Round 2***

- **Covered supplier cost = an expenditure made by an entity:**
  - To a supplier of goods pursuant to a contract, order, or purchase order, that is:
    - In effect before date of disbursement of covered loan for the supply of goods
    - Must be goods essential to operations of entity at time at which expenditure made
- **Covered worker protection expenditure property = An operating or a capital expenditure:**
  - Required to facilitate the adaptation of business activities of an entity
    - To comply with requirements established or guidance issued by HHS, CDC or OSHA (from 03/15/20 and ending on date on which national emergency declared by President (signed on 03/13/20) with respect to the COVID-19 expires (unknown date)
  - Re: sanitation, social distancing or any other worker or customer safety requirement related to COVID-19

# Consolidated Appropriations Act 2021

## ***PPP Round 2***

- **Covered worker protection expenditure property may include the purchase, maintenance, or renovation of assets that create or expand:**
  - Drive-through window facility
  - Indoor, outdoor or combined air or air pressure ventilation or filtration system
  - Physical barrier such as a sneeze guard
  - Indoor, outdoor, or combined commercial real property
  - Onsite or offsite health screening capability; or particulate filtering face piece respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use authorization
  - Other kinds of personal protective equipment, as determined by SBA in consultation with HHS and Labor
  - Does not include residential real property or intangible property

# Timing to apply for forgiveness?

- May borrower apply for forgiveness before end of 24 week covered period? **Yes (IFR (06/22/20) §III 2.b.)**
  - “A borrower may submit a loan forgiveness application any time on or before maturity date of loan – including before the end of the covered period – if borrower has used all of loan proceeds for which borrower is requesting forgiveness”
  - “If borrower applies for forgiveness before end of covered period and has reduced any employee’s salaries or wages in excess of 25%, borrower must account for excess salary reduction for the full 8-week or 24-week covered period”

# What if a Borrower Does Not Apply for Forgiveness?

“If borrower does not apply for forgiveness within 10 months after last day of covered period (or if SBA determines loan not eligible for forgiveness (in whole or in part), the loan is no longer deferred and borrower must begin paying principal and interest” (IFR §III 2.b. (06/22/20))

**Example:** PPP loan proceeds received 4/10/20

- Thus, 24 week (24 week because 8 week not elected) covered period begins 4/10/20 and ends on 9/25/20
- No loan forgiveness application filed
- Payments (to begin repay of PPP loan) must begin on 7/25/21

# PPP Round 1

***IFR 1/6/21***

- Most of this document restates existing regulatory provisions to provide lenders and new PPP borrowers a single regulation to consult on borrower eligibility, lender eligibility, and loan application and origination requirements, as well as general rules on increases and loan forgiveness for PPP loans
- In this rulemaking, Treasury is addressing the needs of new PPP borrowers by allowing all new borrowers to use 2019 or 2020 for purposes of calculating their maximum loan amount

# PPP Round 2

***IFR 1/6/21***

- **The last day to apply for and receive a PPP loan is 03/31/21**
- The Economic Aid Act includes terms and conditions, including, but not limited to, terms relating to eligibility and a borrower's maximum loan amount, that apply only to Second Draw PPP Loans and do not apply to First Draw PPP Loans regardless of when the First Draw PPP Loan is made



# PPP Round 2

**IFR 1/6/21**

- **Eligibility requirements for Second Draw PPP Loans are narrower than eligibility requirements for First Draw PPP Loans**
- Eligible for Second Draw PPP Loan only if:
  - 300 or fewer employees
  - Experienced revenue reduction in 2020 relative to 2019
  - May only be made to an eligible borrower that:
    - has received a First Draw PPP Loan and
    - has used, or will use, full amount of First Draw PPP Loan on or before expected date on which Second Draw PPP Loan disbursed to borrower

# PPP Round 2

**IFR 1/6/21**

- Full amount of the borrower's First Draw PPP Loan includes the amount of any increase on such First Draw PPP Loan made pursuant to the Economic Aid Act
- Borrower must have spent full amount of its First Draw PPP Loan on eligible expenses under PPP rules to be eligible for a Second Draw PPP Loan
  - This clarification will help ensure program integrity by preventing borrower from receiving Second Draw PPP Loan if borrower has not complied with PPP Loan program requirements

# PPP Round 2

**IFR 1/6/21**

- **Second Draw PPP Loans are generally subject to the same terms, conditions and requirements as First Draw PPP Loans.** These include, but are not limited to the following terms:
  - No collateral will be required
  - No personal guarantees will be required
  - The interest rate will be 100 basis points or one percent, calculated on a non-compounding, non-adjustable basis
  - The maturity is 5 years

# PPP Round 2

**IFR 1/6/21**

- **To be eligible for a Second Draw PPP Loan, borrower must have experienced a revenue drop of 25% or more in 2020 relative to 2019**
  - Borrower must calculate this revenue reduction by comparing borrower's quarterly gross receipts for one quarter in 2020 with the borrower's gross receipts for corresponding quarter of 2019
- **Example:**
  - A borrower with gross receipts of \$50,000 in the second quarter of 2019 and gross receipts of \$30,000 in the second quarter of 2020 has experienced a revenue reduction of 40 percent between the quarters, and is therefore eligible for a Second Draw PPP loan

# PPP Round 2

**IFR 1/6/21**

- Unlike First Draw PPP Loans, the Economic Aid Act provides that the relevant time period for calculating a borrower's payroll costs for a Second Draw PPP Loan is either the twelve-month period prior to when the loan is made or calendar year 2019
- IFR subsection (f) uses "calendar year 2020" to refer to "the twelve-month period prior to when the loan is made."
- Calculating payroll costs based on calendar year 2020 rather than the twelve months preceding the date the loan is made will simplify the calculations and documentation requirements for borrowers because payroll records are more commonly created

# PPP Round 2

***IFR 1/6/21***

- Second Draw PPP Loan borrowers who are not self-employed (including sole proprietorships and independent contractors) are also permitted to use the precise 12 month/1-year period before the date on which the loan is made to calculate payroll costs if they choose not to use 2019 or 2020 to calculate payroll costs

# PPP Round 2

## ***Gross Receipts***

- Economic Aid Act does not include a general definition of gross receipts for purposes of determining a borrower's revenue reduction
- According to IFR (01/06/21) subsection (c)(2), **Gross receipts include:**
  - All revenue in whatever form received or accrued (in accord w/ entity's accounting method)
  - From whatever source, including from sales of products or services, interest, dividends, rents, royalties, fees or commissions
  - Reduced by returns and allowances
- This excludes net capital gains or losses as these terms are defined and reported on IRS tax return forms

# PPP Round 2

## ***Gross Receipts***

- **Gross receipts do not include:**

- Taxes collected for and remitted to a taxing authority if included in gross or total income (such as sales or other taxes collected from customers and excludes taxes levied on the concern or its employees)
- Proceeds from transactions between a concern and its domestic or foreign affiliates
- Amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker



# PPP Round 2

## *Gross Receipts*

- **Gross receipts include all other items, such as:**
  - Subcontractor costs
  - Reimbursements for purchases a contractor makes at a customer's request
  - Investment income
  - Employee-based costs such as payroll taxes may not be excluded from gross receipts
- Any forgiveness amount of a First Draw PPP Loan that a borrower received in calendar year 2020 is excluded from a borrower's gross receipts

# Consolidated Appropriations Act 2021

## ***EIDL***

- **Under Consolidated Appropriations Act 2021:**
  - Forgiven EIDL advances are non-taxable
  - Expenses funded by forgiven EIDL advances are deductible
  - EIDL advances do not reduce PPP forgiveness

# The Rules Keep Changing



Photo credit: [LSA Global](#)

# Remember...



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# References

- Treasury.gov
  - [Across Board IFRs](#)
  - [Second Round Loan IFRs](#)
- SBA.gov
- AICPA.org
- Garretycpa.com
- [www.southeastern.edu/admin/sbdc/](http://www.southeastern.edu/admin/sbdc/)

**Any questions?**

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