

Consolidated Appropriations Act, 2021

As of January 20, 2021



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PPP Revisions

Applicable to all PPP loans – General

- The act confirmed that forgiveness of PPP loans is excluded from gross income, while also clarifying that expenses used for PPP loan forgiveness will still be deductible, making the PPP loan fully nontaxable.
- The time period for the SBA to authorize PPP loans was extended through March 31, 2021.
- EIDL advances will no longer be deducted from PPP loan forgiveness.
- For PPP loans of \$150,000 or less, the forgiveness process has been simplified so that the borrower only has to submit SBA Form 3508S when applying for loan forgiveness.



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PPP Revisions

Applicable to all PPP loans – SBA Form 3508S

Paycheck Protection Program

PPP Loan Forgiveness Application Form 3508S (Rev. 01/20/2021)

A BORROWER MAY USE THIS FORM ONLY IF THE BORROWER RECEIVED A PPP LOAN OF \$50,000 OR LESS

Borrower (Legal Name, if borrower)		SBA or Lender's Office	
Business Address:	SBA Office:	Business Type (SIC Code):	Business Name:
Primary Contact:	Phone Number:	Primary Contact:	Loan Amount:

First Draw PPP Loan Second Draw PPP Loan (check one)

SBA PPP Loan Number: _____ Lender PPP Loan Number: _____

PPP Loan Amount: _____ PPP Loan Disbursement Date: _____

Employee at Time of Loan Application: _____ Employees at Time of Forgiveness Application: _____

Covered Period: _____

If Borrower (together with Affiliates, if Applicable) Received First Draw PPP Loans of \$2 Million or More or Second Draw PPP Loans of \$2 Million or More, Check Here:

Amount of Loan Spent on Payroll Costs: _____ Required Loan Forgiveness Amount: _____

To Signify Borrower's True Intent to Repay the Paycheck Protection Program and to Certify that the Borrower is the Authorized Representative of the Borrower, the Borrower certifies to all of the below by checking each to which one:

The Borrower has complied with all requirements in the Paycheck Protection Program Rules (31 CFR 120.001-120.003) and 15 of the Small Business Act, the PPP statute that rules, and guidance issued by SBA through the date of this application, including the order below:

- the amount of PPP loan proceeds that must be used for payroll costs;
- the calculation and documentation of the Borrower's revenue reduction (if applicable); and
- the calculation of the Borrower's Required Loan Forgiveness Amount.

Information regarding these requirements may be found in the Form 3508S Instructions and the Paycheck Protection Program Rules.

The information provided in this application is true and correct to all material aspects. I understand that knowingly making a false statement to obtain forgiveness of a PPP loan is a criminal offense under the law, including 18 U.S.C. 1001 and 3161(b) (regardless of whether the loan is a first or second draw), and, if submitted in a Federal court proceeding, could result in a fine of up to \$500,000, under 18 U.S.C. 1001, and imprisonment for up to five years under a fine of not more than \$1,000,000, and, if submitted in a Federal court proceeding, could result in a fine of up to \$500,000, under 18 U.S.C. 1001, and imprisonment for up to five years under a fine of not more than \$1,000,000.


Following submission of this forgiveness application, the Borrower must retain all records necessary to prove compliance with Paycheck Protection Program Rules for five years for the forgiveness records and for three years for all other records. SBA may request additional information for the purpose of evaluating the Borrower's eligibility for the PPP loan and for loan forgiveness, and the Borrower is liable to provide additional information to SBA that may result in a determination that the Borrower was ineligible for the PPP loan or is a fraud of the Borrower's loan forgiveness application.

The Borrower's eligibility for loan forgiveness will be reviewed in accordance with the Paycheck Protection Program Rules. SBA may deem it prudent to discontinue the Borrower's loan forgiveness application if SBA determines that the Borrower was ineligible for the PPP loan.

Signature of Authorized Representative of Borrower: _____ Date: _____

Print Name: _____ Title: _____

SBA Form 3508S (01-20)




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PPP Revisions

Applicable to all PPP loans – Max Loan Amount Calculation

- For PPP loan applications in 2021, borrowers may use 2020 instead of 2019 figures to calculate their max loan amount.
- In calculating their max loan amount, farmers and ranchers who file a Schedule F on their 1040 may now use their gross income less gross wages paid as owner compensation instead of using net income. Farmers and ranchers are eligible to receive an increase on the First Draw PPP loan based on the new calculation.



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PPP Revisions

Applicable to all PPP loans – Eligible Expenses

- The following expenses are now eligible uses of PPP fund:
 - Covered Operations Expenditures – Payments for business software or cloud computer service that facilitates business operations
 - Covered Property Damage Costs – Costs related to property damage due to public disturbances that occurred during 2020 that was not covered by insurance
 - Covered Supplier Costs – Payments made to an essential supplier or pursuant to a contract in place before the applicable Covered Period
 - Covered Worker Protection Expenditures – In general, expenses related to adapting business activities to comply with new health and safety requirements related to COVID-19, such as PPE, physical barriers, and expansion of business space



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PPP Revisions

Second Draw Loans – Eligibility

- Borrowers who were eligible for and received a First Draw PPP loan may now apply for a Second Draw loan if they meet the following criteria:
 - Has used, or will use, the full amount of its First Draw PPP loan on eligible expenses
 - Employs no more than 300 employees
 - Had a 25% reduction in gross receipts during any calendar quarter in 2020 compared to the same quarter in 2019



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PPP Revisions

Second Draw Loans – Accommodation and Food Services

- The following rules are applicable for borrowers assigned a NAICS code beginning with 72, such as hotels and restaurants:
 - Eligibility – For borrowers with more than one physical location, the borrower will meet the employee criteria if it employs not more than 300 employees **per location**
 - Max Loan Amount Calculation – Borrowers will use 3.5x their average monthly payroll to calculate their max loan amount, instead of the 2.5x used by all others



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PPP Revisions

Second Draw Loans – Gross Receipts

- In calculating the gross receipts reduction test, borrowers should include all revenue in whatever form received or accrued (in accordance with the entity's accounting method) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances.
- The First Draw PPP loan and EIDL advance are explicitly **excluded** from gross receipts in 2020; however, our understanding is that other taxable forms of COVID-19 relief, such as the Alabama Revive Plus Grant, should be **included** in gross receipts for 2020.



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Employee Retention Credit (ERC)

The CAA included an expansion of the 2020 ERC

- Retroactive to the enactment of the CARES Act, PPP loan recipients are no longer ineligible to receive the credit.
- If deemed an eligible employer, the Retention Credit can be taken for qualified wages paid, but not on the same dollars of payroll costs used for PPP loan forgiveness.
- The retroactive credit can be reported on the 4th quarter 2020 Form 941.



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Employee Retention Credit (ERC)

Employers, including tax-exempt organizations, are eligible for the credit if they operate a trade or business and experience either:

- the full or partial suspension of the operation of their trade or business during any calendar quarter because of governmental orders limiting commerce, travel, or group meetings due to COVID-19, or
- a significant decline in gross receipts.



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Employee Retention Credit (ERC)

The 2020 ERC as provided in the CARES Act

- Significant decline in gross receipts is defined as a quarter of 2020 for which the gross receipts are less than 50% of the gross receipts for the same quarter in 2019.
- The significant decline ends in the quarter when the gross receipts of a quarter are more than 80% of the gross receipts in the same quarter of 2019.
- The credit is 50% of wages (including certain health plan costs) paid to each employee up to \$10,000 annually.
- For employers with >100 employees, eligible wages are only those paid to employees that are not providing services.



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Employee Retention Credit (ERC)

Extension and expansion to ERC 2021 by the CAA

- Credit is now available for qualified wages paid through June 30, 2021.
- Credit is now 70% of up to \$10,000 in qualified wages per employee **per quarter**.
- Significant decline eligibility is now defined as a reduction in revenues of only 20% compared to the same quarter in **2019**.
- Provides an option to satisfy the gross receipts test by using the decline of the immediately preceding quarter rather than the current quarter.
- Limit to wages paid only to employees that are not providing services now applies to employers with >500 employees.



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Employee Retention Credit (ERC)

Coordination with PPP funding

- If you have not applied for First Draw loan forgiveness, and you are eligible based on the above 2020 qualifications, careful consideration can be made for wages considered in the PPP forgiveness versus ERC.
- PPP borrowers may now want to maximize their nonpayroll costs (up to 40% of the loan amount) to substantiate forgiveness rather than entirely by payroll costs.
- PPP Second Draw loan recipients expected to be eligible for ERC based on the 2021 qualifications can be planning for the use of funding for wages between the two programs.



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FFCRA Leave credits

The Families First Coronavirus Relief Act required certain compensation if your employee is unable to work (or telework) due to:

1. Experienced symptoms and/or is following quarantine requirements
2. If your employee is caring for someone who is sick
3. If your employee is caring for a child whose place of care is closed due to the virus



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FFCRA Leave credits

Amounts of the required compensation for up to 10 days

1. (symptoms or required quarantine) - Employee's regular rate of pay, up to \$511 per day
- 2 or 3. (caring for sick person or child) - Two-thirds of the employee's regular pay, up to \$200 per day

Payroll Tax credits are available

- Required compensation is not subject to the employer's share of social security tax
- The required compensation + employer's share of Medicare tax
- Related health plan expenses paid by employer



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Payroll tax credits

Employee Retention Credits and FFCRA Sick and Family Leave Credits

- Refundable credits can be used to reduce Federal payroll tax deposits.
- An employer can request an advance of the credits not covered by the reduction in deposits by using Form 7200.
- Both credits must be reported on the quarterly 941.



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FFCRA Paid Leave credits

- The original requirements of the FFCRA paid leave expired 12/31/20
- The Consolidated Appropriations Act extended the period for taking the payroll tax credits to eligible compensation paid through 3/31/21
- Leaving the eligible paid leave as optional for employers



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