

PPP and EIDL Changes Following December COVID Act

Presented by:

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**Tuesday, December 22, 2020
9:00 a.m. – 9:30 a.m. ET (30 minutes)**



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Income Tax Law Changes

1. 100% of Adjusted Gross Income can be deducted for charitable contributions for both 2020 and 2021, if requirements are satisfied.
2. As a result of the above, IRA owners over 59½ can transfer unlimited amounts to charities.
3. \$300 (\$600 for married couple) charitable deduction for non-itemizers.
4. Business meals and beverages will now be 100% tax-deductible if provided by restaurants for 2021 and 2022 tax year.
5. Medical expenses exceeding 7.5% of Adjusted Gross Income will be deductible.
6. Educator expense deduction (up to \$250) includes expenses incurred for purchase of personal protection equipment.
7. No repayment required for stimulus check received that exceeds credit amount on 2020 tax return.



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Checklist for Charitable Planning Opportunities for 2020 & 2021

Make charitable contributions:

- a. \$300 (\$600 for married couple) is deductible regardless of itemized deductions.
- b. Gift to a private foundation, private operating foundation, donor-advised fund, or community foundation to exceed standard deduction if the client will dole out gifts over following years
- c. Defer charitable gifting until 2021 if a higher tax bracket is expected.
- d. Gift in 2020 and 2021 to maximize charitable deductions with 5-year carryforward even if taxable income was low in 2020 or 2021.
- e. High-bracket charitable individuals who are limited to 50% of adjusted gross income can gift 100% of AGI now even if the deduction will not be used this year - Use it or lose it.



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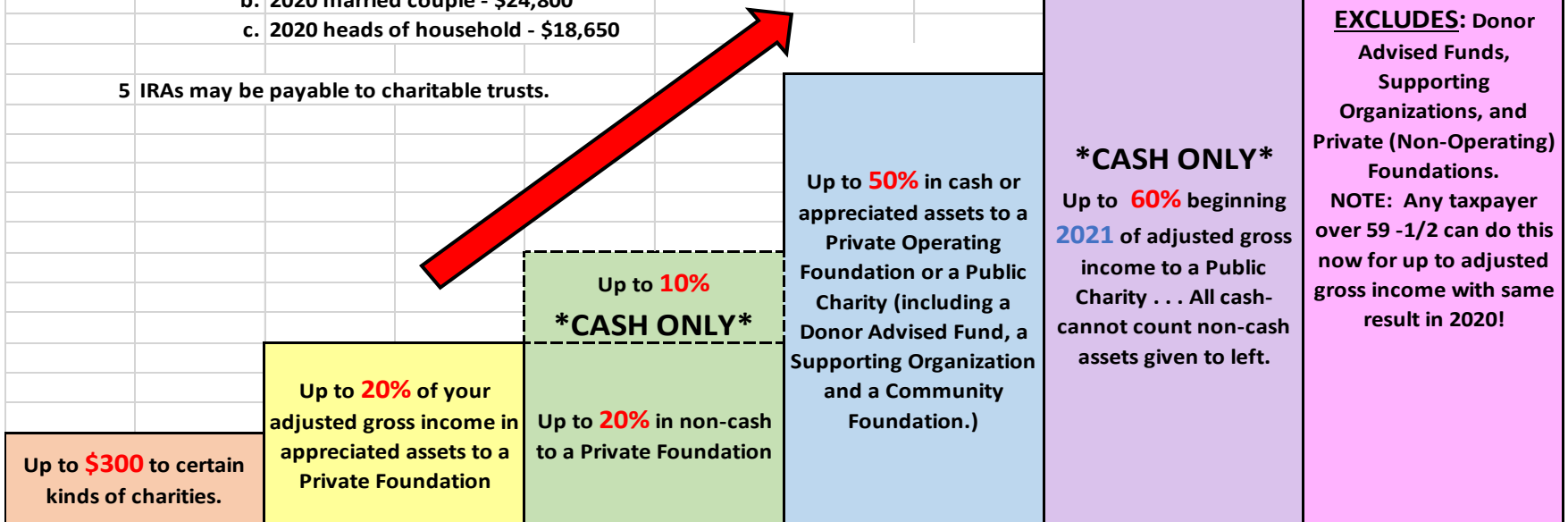
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2020 Charitable Deduction Percentage Summary Chart

Special Notes:

- 1 Donations to charitable remainder annuity trusts and charitable remainder unitrusts can generate deductions in the same categories as shown on this chart.
- 2 S corporations can deduct up to 25% of its taxable income in 2020 - normally only 10% of taxable income.
- 3 Assets left on death do not qualify for an income tax deduction but can save income taxes on "income in respect of a decedent" (IRAs, pension accounts, variable annuities, etc.)
- 4 Individual taxpayers who itemize:
 - a. 2020 single individual - \$12,400
 - b. 2020 married couple - \$24,800
 - c. 2020 heads of household - \$18,650
- 5 IRAs may be payable to charitable trusts.



CASH ONLY
Up to **100%** for **2020** of adjusted gross income to a Public Charity . . . All cash-cannot count non-cash assets given to left.
EXCLUDES: Family-funded Private Foundations and Donor Advised Funds.

CASH ONLY
Up to **60%** beginning **2021** of adjusted gross income to a Public Charity . . . All cash-cannot count non-cash assets given to left.

SPECIAL RULE FOR TAXPAYERS OVER 70-1/2
--- Can transfer up to **\$100,000** from an IRA to a Public Charity, Private Operating Foundation, or a Community Foundation.
EXCLUDES: Donor Advised Funds, Supporting Organizations, and Private (Non-Operating) Foundations.
NOTE: Any taxpayer over 59 -1/2 can do this now for up to adjusted gross income with same result in 2020!



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Forgiven PPP Loans Will Be Deductible

In May, the IRS issued Revenue Notice 2020-32 which alarmed many PPP borrowers because it took the position that expenses paid for with forgiven loans would not be deductible.

This was against Congress's intent, as evidenced by the letter sent by Senators Grassley, Neal, and Wyden to Treasury Secretary Steve Mnuchin, and the new Act solidifies this position. In relevant part, the new Act states:

“(2) no deduction shall be denied or reduced, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1).”

Initial reports from the Wall Street Journal indicated that at least one GOP aid had said that these deductions would be restricted in some way, however, there does not appear to be any language in the Act to suggest that this is the case.



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Second Draw - Eligible Recipients May Receive a Second PPP Loan

An “eligible recipient” will be defined as “any business concern, nonprofit organization, housing cooperative, veterans organization, Tribal business concern, eligible self-employed individual, sole proprietor, independent contractor, or small agricultural cooperative” that meets the following three requirements:

1. Employs not more than 300 employees;
2. Has or will use the full amount of their first PPP loan; and
3. Had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter in 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the same quarter in 2019

Previous iterations of this Act that did not pass, would have required a 50 percent reduction from gross receipts, so this change to 25 percent will allow PPP loans to reach a greater number of potential borrowers.



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The “Necessity” Requirement

An “eligible recipient” will also still need to satisfy the “Necessity Test”

Some may remember that borrowers were required to certify in good faith on their initial PPP loan application that the loan is “necessary to support the ongoing operations of the applicant.” Notably, this “necessity requirement” still appears to be in place following the passage of this Act. The necessity requirement is interesting because it was never fully defined which left many borrowers wondering just how much economic harm had to be inflicted upon their business before they could certify in good faith that the loan was “necessary.”

It may be hard for businesses that have survived one or two hard quarters but are now making ends meet to honestly certify that the loan is “necessary” for the ongoing operation of the business, even though the business could reasonably argue that they need the loan. The test will present a very important issue to be carefully addressed with the borrower’s CPA, financial and legal advisors.

While the SBA has announced that it will not question the necessity certification for those whose loans did not exceed \$2 million, other agencies (such as the IRS), or even whistleblowers, may. Additionally, reception of a second loan will not be kept confidential so borrowers may have to endure harsh public scrutiny.



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Maximum Amount of New PPP Loans For Seasonal Employers, New Entities, and Businesses With More Than One Physical Location

For seasonal employers, the maximum amount of new PPP loans is based upon 2.5 times the average monthly payroll costs for the 12-week that begins February 15, 2019 or March 1, 2019 and ends February 15th, 2020. The loan can be for up to, but not exceed, \$2 million.

For new entities, the maximum amount of new PPP loans is based upon the average monthly payroll costs up through the date when the entity applies multiplied by 2.5, but not exceeding \$2 million.

For businesses with more than one physical location, the maximum amount of new PPP loans is stated as follows:

(I) the total amount of all covered loans shall be not more than \$2,000,000; and

(II) in applying this paragraph, the Administrator shall substitute 'not more than 300 employees per physical location' for the term 'not more than 500 employees per physical location' in paragraph (36)(D)(iii).



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Chinese Owned Entities Are Ineligible For a Second Draw PPP Loan

Publically traded businesses and entities affiliated with the People's Republic of China are on the list of entities that cannot qualify for a new PPP loan. The Act states the following:

(AA) for which an entity created in or organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong, or that has significant operations in the People's Republic of China or the Special Administrative Region of Hong Kong, owns or holds, directly or indirectly, not less than 20 percent of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership; or

(BB) that retains, as a member of the board of directors of the business concern, a person who is a resident of the People's Republic of China

Interestingly, China is the only restricted country included in the new Act while other adversarial nations such as Iran, Russia, or North Korea are not.



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Additional Loans Cannot Exceed \$2,000,000 per Borrower—90 Day Wait Between Loans

The loan amounts for a vast majority of borrowers will be almost identical to what the borrower received for their original PPP loan. This second round of funding, however, is capped at \$2 million per borrower rather than \$10 million under the initial round of PPP loans in the CARES Act. For borrowers who received a PPP loan within the last 90 days, the new Act requires that the aggregate of the new and old loan not exceed \$10 million.



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No Enforcement Action Against Banks

The proposed bill provides that there will be no “enforcement action” with respect to lenders. The Act states as follows:

“(3) NO ENFORCEMENT ACTION.—With respect to a lender that relies on a certification or documentation described in paragraph (2) related to an initial or second draw PPP loan, an enforcement action may not be taken against the lender, and the lender shall not be subject to any penalties relating to loan origination or forgiveness of the initial or second draw PPP loan, if—

(A) the lender acts in good faith relating to loan origination or forgiveness of the initial or second draw PPP loan based on that reliance; and

(B) all other relevant Federal, State, local, and other statutory and regulatory requirements applicable to the lender are satisfied with respect to the initial or second draw PPP loan.”



Lender Compensation

This Act also provides that lenders will be compensated by the Administrator of the SBA. The Act states as follows:

“(L) REIMBURSEMENT FOR LOAN PROCESSING AND SERVICING.—The Administrator shall reimburse a lender authorized to make a covered loan—

(i) for a covered loan of not more than \$50,000, in an amount equal to the lesser of—

(I) 50 percent of the balance of the financing outstanding at the time of disbursement of the covered loan; or

(II) \$2,500;

(ii) at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

(I) 5 percent for a covered loan of more than \$50,000 and not more than \$350,000; and

(II) 3 percent for a covered loan of more than \$350,000.



Rules for Borrowers in Bankruptcy

Borrowers in bankruptcy will be able to apply for a PPP loan based on the provisions of the new Act. The Act reads as follows:

“(g)(1) The court . . . may authorize a debtor in possession or a trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of this title to obtain a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), and such loan shall be treated as a debt to the extent the loan is not forgiven in accordance with section 7A of the Small Business Act or subparagraph (J) of such paragraph (37), as applicable, with priority equal to a claim of the kind specified in subsection (c)(1) of this section.”



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Simplified Application for Loans Under \$150,000

Borrowers who received less than \$150,000 in PPP loans during the first round will now only have to submit a one-page application for forgiveness, but all of the same rules apply. The signer of this application may as well sign the longer application to make sure that they have everything done right because personal liability can be enormous. Our recommendation is that clients consult with their CPAs carefully and fill out the long application but actually submit the short application, with their answers in the long application being kept in case they are ever investigated.

The proposed bill states as follows:

“(A) IN GENERAL .—With respect to a covered loan made to an eligible recipient that is not more than \$150,000, the covered loan amount shall be forgiven under this section if the eligible recipient—

(i) signs and submits to the lender a certification, to be established by the Administrator not later than 24 days after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, which—

(I) shall be not more than 1 page in length; and

(II) shall only require the eligible recipient to provide—

(aa) a description of the number of employees the eligible recipient was able to retain because of the covered loan;

(bb) the estimated amount of the covered loan amount spent by the eligible recipient on payroll costs; and

(cc) the total loan value;

(ii) attests that the eligible recipient has—

(I) accurately provided the required certification; and

(II) complied with the requirements under section 7(a)(36); and

(iii) retains records relevant to the form that prove compliance with such requirements—

(I) with respect to employment records, for the 4-year period following submission of the form; and

(II) with respect to other records, for the 3-year period following submission of the form.



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PPP Borrower Covered Period Election

Borrowers are now able to choose the 8 to 24 week covered period during which the borrower is required to spend a sufficient amount on qualified expenses to receive forgiveness. This begins the day the borrower received the funds and ends on any day selected by the borrower, but no earlier than 8-weeks from the date the loan proceeds are received and no later than 24 weeks after such date of origination.

This change will enable borrowers to cut off the testing period before making a reduction in workforce that would cause the applicable reduction in workforce penalties to apply, as long as the workforce is at its pre-February 15 levels on the last day of the Covered Period. The proposed bill states as follows:

(4) the term ‘covered period’ means the period—

(A) beginning on the date of the origination of a covered loan; and

(B) ending on a date selected by the eligible recipient of the covered loan that occurs during the period—

(i) beginning on the date that is 8 weeks after such date of origination; and

(ii) ending on the date that is 24 weeks after such date of origination;



501(c)(6) Organization Eligibility

Organizations that are classified as a 501(c)(6) will have expanded eligibility to PPP loans. A 501(c)(6) is defined as follows:

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

The proposed bill states as follows regarding 501(c)(6) eligibility:

(I) IN GENERAL.—Any organization that is described in section 501(c)(6) of the Internal Revenue Code and that is exempt from taxation under section 501(a) of such Code (excluding professional sports leagues and organizations with the purpose of promoting or participating in a political campaign or other activity) shall be eligible to receive a covered loan if—

(aa) the organization does not receive more than 15 percent of its receipts from lobbying activities;

(bb) the lobbying activities of the organization do not comprise more than 15 percent of the total activities of the organization; and

(cc) the cost of the lobbying activities of the organization did not exceed \$1,000,000 during the most recent tax year of the organization that ended prior to February 15, 2020; and

(dd) the organization employs not more than 300 employees.



Additional Eligible Expenses That Count Towards Forgiveness

The Act expands on the list of forgivable expenses to now include the following:

1. Covered operations expenditures defined as “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.”
2. Covered property damage cost defined as “a cost 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.”
3. Covered supplier cost defined as “an expenditure made by an entity to a supplier of goods for the supply of goods that (1) are essential to the operations of the entity at the time at which the expenditure is made; and (2) is made pursuant to a contract, order, or purchase order in effect at any time before the covered period with respect to the applicable covered loan, or with respect to perishable goods in effect before or at any time during the covered period with respect to the applicable covered loan.”



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Additional Eligible Expenses That Count Towards Forgiveness

The Act expands on the list of forgivable expenses to now include the following:

4. Covered worker protection expenditure defined as means an operating or a capital expenditure 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 declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (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 Act includes specific examples of what may be included as a Covered Worker Protection Expenditure as well as examples of items that do not qualify for such expense.



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Borrowers Can Amend Loan Applications to Request Increase in PPP Loan Amount As a Result of A Change In the Rules

The Act requires that the SBA issue guidance to lenders within 17 days to provide a process for borrowers who returned all or part of their PPP loan to reapply for the maximum allowable amount so long as they have not requested forgiveness, perhaps allowing those borrowers who returned their loan before the issuance of the \$2 million loan necessity safe harbor to reapply and receive their original loan amount.

The Act also allows borrowers that would have received an increased loan amount due to changes in interim final rules issued by the SBA or as a result of the Act to reapply for the difference.



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Relief for Schedule F Farmers (*Old McDonald Had a Loan*)

There was some confusion as to whether farmers reporting income on Schedule F were eligible to receive a second bite PPP loan. Fortunately, the Act includes specific provisions that allow farmers reporting income on a Schedule F to qualify for a PPP loan based on their 2019 Schedule F income in a similar manner that applies to Schedule C taxpayers.



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EIDL Program For Hardest Hit Businesses

The term “covered entity” for the targeted EIDL program is stated as follows:

(2) COVERED ENTITY.—The term “covered entity”—

(A) means an eligible entity that—

- (i) applies for a loan under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) during the covered period, including before the date of enactment of this Act;
- (ii) is located in a low-income community;
- (iii) has suffered an economic loss of greater than 30 percent; and
- (iv) employs not more than 300 employees; and

(B) except with respect to an entity included under section 123.300(c) of title 13, Code of Federal Regulations, or any successor regulation, does not include an agricultural enterprise.



EIDL Program For Hardest Hit Businesses

The priority for the targeted EIDL program is as follows:

(d) ORDER OF PROCESSING.—The Administrator shall process and approve requests for payments under subsection (b) in the order that the Administrator receives the requests, except that the Administrator shall give—

- (1) first priority to covered entities described in subsection (b)(2)(A); and
- (2) second priority to covered entities that have not received emergency grants under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)), as of the date on which the Administrator receives such a request, because of the unavailability of funding to carry out such section 1110(e).



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EIDL Program For Hardest Hit Businesses

Businesses that receive EIDL loans are unable to pay several things without SBA approval, including paying dividends, paying bonuses to any employees, including non-owners, and using EIDL funds for anything other than business purposes.

EIDL borrowers must keep records of how the EIDL loan is spent, and provide this information to the SBA within 90 days after the loan is repaid. There is a lack of privacy for the borrower of an EIDL loan, and the loan details are available to the public because of the Freedom of Information Act, enumerated at 5 U.S.C. § 552.



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EIDL Advance Non-Taxable and No Longer Reduces PPP Loan Forgiveness

The Act also replenishes the EIDL Advance fund, which allows businesses suffering a substantial economic injury to apply for an advance that does not need to be repaid or up to \$1,000 per employee limited to \$10,000 total.

Prior law stated that any EIDL Advance received would reduce PPP Loan Forgiveness, essentially requiring the Advance to be repaid.

The new Act repeals this provision so the receipt of an EIDL Advance will have no impact on PPP loan forgiveness. Borrowers that have already applied for and received loan forgiveness presumably may now amend their application to request that the \$10,000 EIDL Advance (or amount actually received) not reduce their forgiveness amount and request repayment.



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KEY TAKEAWAYS FOLLOWING DECEMBER COVID ACT



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Key Takeaways

1. Additional \$3 billion provided to the HHS Provider Relief Fund to assist health care providers prepare for and respond to the Coronavirus and reimbursement for lost revenues.
2. Medicare physician fee schedule increased by 3.75% temporarily as another way to reimburse health care providers.
3. Pandemic Unemployment Assistance payments of an additional \$300/ week applies through March 14, 2021 or maximum of 24 weeks.
4. Stimulus checks of \$600 per taxpayer (\$1,200 for taxpayers married filing jointly) and an additional \$600 per qualifying child. The payment phases out beginning at \$75,000 (\$150,000 MFJ) of AGI.
5. No repayment requirement if applicable credit amount for receipt of stimulus check on 2020 return is less than payment issued.
6. Payroll taxes may be deferred until December 31, 2021, and no penalties or interest will accrue until January 1, 2022.
7. Educator expense deduction includes expenses incurred for purchase of personal protection equipment purchased
8. EIDL Advance is non taxable.



Key Takeaways

9. FFCRA credits for paid sick and family medical leave extended through March 2021.
10. Additional eligible expenses that qualify for forgiveness now include covered operation expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures
11. Borrowers may select the end of their covered period anytime between 8 - 24 weeks from receipt of loan.
12. Simplified Loan Forgiveness process for borrowers with less than \$150,000 of loans.
13. Payroll costs now include employer payments for group life, disability, vision, and dental insurance payments.
14. Borrowers can amend their original application to request increased loan amount due to changes in PPP loan rules if the original loan amount was less than amount that would have otherwise applied.
15. No eligibly for PPP loan if the business was not in operation as of Feb 15th, 2020.
16. Small businesses with less than 300 employees and a 25% or more drop in revenue (gross receipts for non-profits) are eligible for a second round of PPP.



Key Takeaways

17. Borrowers can elect to calculate the second round based on 2.5x the average monthly payroll costs during any one year period prior to the date of the loan or the 2019 calendar year.
18. All existing safe harbors and exceptions for reduction in employee headcount (FTEs), and the Act further provides that the SBA may modify dates of safe harbors to comply with intent of PPP.
19. Act allows borrowers to reapply even if they have returned their loan amount or if a change in the rules would allow them to receive a larger PPP loan.
20. Act makes it clear the Schedule F Farmers are eligible for PPP loan based on 2019 Schedule F income
21. 501(c)(6) entities (with the exception of sports teams) are eligible for receipt of PPP loan.
22. \$100,000 salary/wage limitation applies on an annualized basis.



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Key Takeaways

23. March 31, 2020 new deadline to apply for and receive a PPP Loan.
24. EIDL Advance fund replenished with \$20 Billion to be distributed to low income communities first
25. \$15 Billion set aside for Shuttered Venue Grants that have a 25% reduction in revenue in first, second, or third quarter of 2020 as compared to the same quarter in 2019.
26. Payment equal to 40% of 2019 gross revenue with certain strings attached as to the use of funds.
32. Recipients of Shuttered Venue grants are ineligible to receive PPP loans.
33. Medical Expenses Itemized Deduction Floor now permanently set at 7.5% of AGI.
34. 100% write off for business meals for 2021 and 2022 if food and beverage is provided by a restaurant and paid or incurred prior to Jan 1, 2023.
35. \$300 (\$600 for taxpayers married filing jointly) above the line charitable deduction for cash payments to public charity made in 2021.
36. 100% of AGI charitable limitation continues to apply for 2021.
37. HSA and Dependent Care FSA plans may now permit unused benefits to be carried over to next tax year through 2021 plan year.



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**THANK YOU
FOR PARTICIPATING!**

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