

January 13, 2021

In an effort to keep you updated during the COVID-19 pandemic, we wanted to share with you the below updates to the Paycheck Protection Program. For questions and concerns regarding the new legislation on the Paycheck Protection Program it is important that you contact your CPA. Sheakley is providing this to you for informational purposes only.

## Paycheck Protection Program

The much anticipated Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the Act) became law on December 27, 2020, bringing more clarity and opportunities to receive a Paycheck Protection Program (PPP) loan and use the loan proceeds. The Act reopens the PPP to eligible businesses who did not receive a PPP loan in 2020 and certain new businesses who previously were not eligible to receive a PPP loan (First Draw PPP Loans), while giving existing PPP recipients the chance to borrow additional PPP funds (Second Draw PPP Loans).

The Small Business Administration (SBA) announced the PPP will re-open the week of January 11 for new borrowers and certain existing PPP borrowers. Initially, only community financial institutions will be able to make First Draw PPP Loans on Monday, January 11, and Second Draw PPP Loans on Wednesday, January 13. The PPP will open to all participating lenders shortly thereafter. A revised application for the First Draw PPP Loans and a new application for the Second Draw PPP Loans have been released and can be found on the [SBA's website](#). Prior to the re-opening announcement, the SBA issued two Interim Final Rules: Paycheck Protection Program as Amended by Economic Aid Act and Second Draw PPP Loans, outlining program changes under the Act and the SBA's implementation of those program changes.

Borrowers should become familiar with the SBA's changes to the terms of the First Draw PPP Loans and Second Draw PPP Loans and speak to their CPA to quickly take advantage of the re-opening of the program. Eligible small businesses can apply for the PPP loans before the new deadline of March 31, 2021, to the extent that funds remain available.

Items to consider under new legislation (*your CPA will be able to provide additional guidance*):

- ***If you are ready to apply for forgiveness for a First Draw PPP Loan and the amount will be reduced due to a reduction in salaries or wages:***  
Consider whether the ability to select a covered period reduces any potential reduction in the forgiveness amount that may have been due to a reduction in salaries or wages greater than 25% since the length of the covered period can be shortened and the salary reduction carry-through period reduced.
- ***If your First Draw PPP loan amount is less than \$150,000 and have not yet applied for forgiveness:***  
Consider waiting to apply for forgiveness until the simplified application becomes available.
- ***If you are eligible for a PPP Second Draw Loan, have spent all of the PPP First Draw Loan proceeds but have not yet applied for loan forgiveness:***  
Consider waiting to apply for forgiveness to reduce the chance that your First Draw PPP Loan is considered unresolved by the SBA. If a borrower's First Draw PPP Loan is under review by

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the SBA or information in the SBA's possession indicates that the borrower may have been ineligible for the First Draw PPP Loan it received, the lender will not receive an SBA loan number until the issue is resolved.

- ***If you are considering a First Draw PPP Loan or a Second Draw PPP Loan but have not reviewed whether the economic uncertainty makes the loan necessary:***

Review and discuss the necessity certification and make sure it can be made in good faith. All borrowers still have to certify that current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant. Borrowers of First Draw PPP Loans who receive less than \$2 million will continue to be deemed to have made the certification in good faith.

- ***If you are considering closing your business but think you may reopen in the next few months:***

Be careful about how you describe your "closing" and be certain to describe it as a "temporary closing." If you have not "permanently closed" and are otherwise eligible, you may be able to obtain a PPP loan to assist in re-opening (provided you only use the loan funds for the permitted uses). The Interim Final Rule for Second Draw Loans specifically states that a borrower that has temporarily closed their business remains eligible for a Second Draw PPP Loan.