

# PPP and SOS Opportunities and Considerations\*

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**\*As understood on January 29<sup>th</sup> based on SBA guidance**

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# Economic Injury Disaster Loan (EIDL)

# EIDL

## If PPP or SVO/SOS aren't applicable, EIDL could be an option

- Apply to the SBA: <https://covid19relief.sba.gov/#/>
- Loan program with no forgiveness offered (30 year fixed at 2.75%)
  - \$150,000 loan is usually max and loan of \$25,000 & less require no collateral
- EIDL funds can be used for a variety of purposes

## COVID-19 Targeted EIDL Advance (\$20 billion allocated) Update

- Provides businesses located in low-income communities with additional funds
- SBA will reach out to those who qualify
- No new EIDL Advance payments are being offered

# PPP Loan Forgiveness

# PPP Use: Round 1

## COVERED

### ***Payroll Expenses (60% Required)***

- Cash Compensation
  - Cash compensation includes salaries, wages and commissions (including to furloughed employees), tips, bonuses, hazard pay, paid leave, severance, and housing allowances
- Employer Paid Health & Retirement Benefits
  - Group health benefits includes medical, dental, and vision
- Employer Paid State & Local Payroll Taxes

### ***Non-Payroll Eligible Expenses (40% Maximum)***

- Rent & Mortgage Interest, Other Interest
  - Other Interest not eligible for forgiveness
- Utilities (Water, Gas, Electricity, Transp. Internet, Phone)

## NOT COVERED

- Excess Wages for Salaries Over \$100k
- Payroll for Employees Permanently Outside US
- **Independent Contractor Pay (1099s): can apply on their own**
- Employer Portion of Federal Taxes & FICA
- FFCRA Credits for Sick and Family Leave

## COVID RELIEF ACT HIGHLIGHT CHANGES APPLY TO 2020 AND 2021:

- **Clarification of Group Insurance Benefits (DBL, Life, etc)**

### **Added Non-Payroll Eligible Expenses (capped at 40%)**

- **Covered operations expenditures**
- **Covered property damage costs**
- **Covered supplier costs**
- **Covered worker protection expenditures**

# Loan Forgiveness Applications

**3508 Application** (full app including FTE ratio and wage reduction penalty with safe harbors; loan over \$150,000)

OR

**3508EZ Application** (Certify meet the criteria; FTE ratio and wage reduction penalty removed; loan over \$150,000)

OR

**3508S Application** (now covers \$150,000 and less; 3508EZ criteria and 3508 criteria still apply for loans above \$50,000)

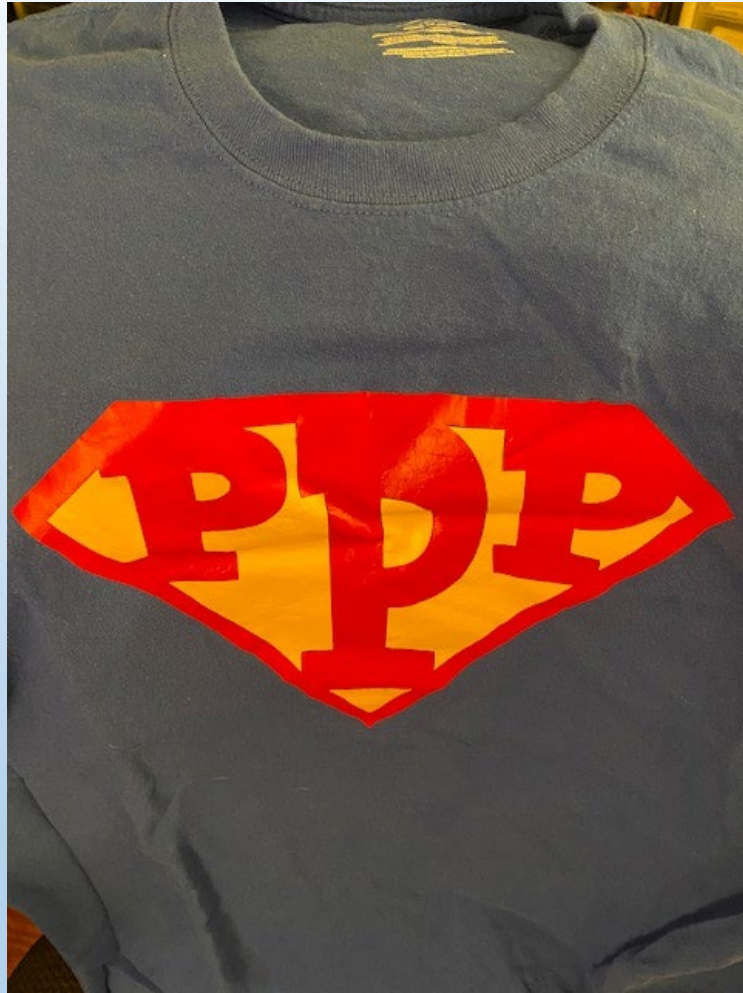
- Loans under \$50,000 don't account for FTE ratio or wage reduction
- Loans over \$50,000 still address requirements outlined in 3508EZ and 3508 (through the certification and the loan forgiveness amount requested)
- No documentation submitted (but required to retain payroll records for 4 years and other documents for 3 years)
- Applicable to 2020 1<sup>st</sup> draw and 2021 1<sup>st</sup> draw and 2<sup>nd</sup> draw loans

# EIDL Advance Payment Update

## EIDL Advance Deduction Eliminated

- Repeals section 1110(e)(6) of the CARES Act, which was addressed on the PPP loan forgiveness app (list amount of EIDL Advance)
- EIDL Advance of up to \$10,000 will no longer be deducted from the PPP loan forgiveness
- Any organizations that have already applied for forgiveness and EIDL Advance was deducted will be made whole





# Round 2

# Eligibility Update

- Already received PPP loan (1<sup>st</sup> draw)
- Finished spending 1<sup>st</sup> draw (but not required to have applied for loan forgiveness)
- Have 300 or fewer employees (as compared to 500 or less with Round 1)
- 25% drop in gross receipts in any quarter in 2020 as compared to same quarter in 2019
- 2<sup>nd</sup> draw PPP maximum is \$2 million
- Eligible entities must be businesses, certain nonprofit organizations (**501C6s are new**), housing cooperatives, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives
- Ineligible entities include:
  - **Organizations that receive a grant under the Shuttered Venue Operator Grant program**
    - SBA FAQ confirmed that an organization cannot apply for the PPP and SVO at the same time. A choice must be made. If an application made is declined, the organization can apply to the other option.
  - **Business or organization that was not in operation on February 15, 2020**

**Program requirements are the same: 60% payroll expenses (minimum) and 40% maximum for non-payroll eligible expenses**

# Applying for the 2<sup>nd</sup> Draw

- \$284 billion to SBA for Paycheck Protection Program
- 2.5 times average monthly payroll based on choice of 12 months prior to applying for the loan, or 2020 or 2019 (calendar years)
- NAICS lookup <https://www.naics.com/search/>
- 25% reduction in gross receipts identified by Quarter 2020 as compared to same quarter in 2019
  - Can be left blank for loans of \$150,000 or less, but best to fill in
    - Documentation provided when seeking loan forgiveness
  - For loans greater than \$150,000, documentation is required with app

# 25% Gross Receipts Reduction: Definition

- Gross Receipts = Gross Income
- For nonprofits, gross receipts meaning of section 6033 of the Internal Revenue Code of 1986, which is the gross amount received by the organization during its annual accounting period from all sources **without reduction for any costs or expenses** including, for example, cost of goods or assets sold, cost of operations, or expenses of earning, raising, or collecting such amounts. Thus “gross receipts” includes, but is not limited to:
  - (i) the gross amount received as contributions, gifts, grants, and similar amounts without reduction for the expenses of raising and collecting such amounts,
  - (ii) the gross amount received as dues or assessments from members or affiliated organizations without reduction for expenses attributable to the receipt of such amounts,
  - (iii) gross sales or receipts from business activities (including business activities unrelated to the purpose for which the organization qualifies for exemption, the net income or loss from which may be required to be reported on Form 990-T),
  - (iv) the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and
  - (v) the gross amount received as investment income, such as interest, dividends, rents, and royalties.

# 25% Gross Receipts Reduction: Documentation

- **Quarterly financial statements** for the entity.
  - If not audited, sign and date first page of financial statement and initial all other pages attesting to their accuracy.
  - If not identified, note what makes up gross receipts.
- **Quarterly or monthly bank statements** for the entity showing deposits from the relevant quarters.
  - Note, if not clear, which deposits listed make up gross receipts and which do not.
- **Annual IRS income tax filings** of the entity (required if using an annual reference period).
  - If 2020 return not yet filed, then fill out the return forms, compute the gross receipts value, and sign and date the return (attesting the values and info will be the same on filed return).
    - Gross receipts value for nonprofit organizations (IRS Form 990): the sum of lines 6b(i), 6b(ii), 7b(i), 7b(ii), 8b, 9b, 10b, and 12 (column (A)) of Part VIII.
    - Gross receipts value for nonprofit organizations (IRS Form 990-EZ): sum of lines 5b, 6c, 7b, and 9 of Part I.

# Covered Period Update

- Section 306: Covered Period for Forgiveness
- Borrower can now elect a covered period that falls between 8 – 24 weeks
  - Gives more flexibility to spend the PPP funds
  - Covered period begins on date funds are disbursed or aligned with first payroll
- Applies to 1<sup>st</sup> draw 2020 PPP loans (as outlined on 3508S)
  - Previous covered period options were 8 weeks or 24 weeks before PPP Flexibility Act and 24 weeks after the Act (when loan was received)

# Other New Additions

- **Payroll Expenses:** Clarification that group disability and life insurance are eligible payroll expenses with other employer-paid group insurance benefits (health, dental and vision).
- **New Eligible Non-Payroll Expenses**
  - **Covered operations expenditures:** Payment for any software, cloud computing, and other human resources and accounting needs.
  - **Covered property damage costs:** Costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance.
  - **Covered supplier costs:** Expenditures to a supplier pursuant to a contract, purchase order, or order for goods in effect prior to taking out the loan that are essential to the recipient's operations at the time at which the expenditure was made. Supplier costs of perishable goods can be made before or during the life of the loan.
  - **Covered worker protection expenditure:** Personal protective equipment and adaptive investments to help a loan recipient comply with federal health and safety guidelines or any equivalent State and local guidance related to COVID-19 during the period between March 1, 2020, and the end of the national emergency declaration.

# Shuttered Venue Operators Grant (aka Save Our Stages)



# Shuttered Venue Operators Overview

- Sec. 324 Grants for Shuttered Venue Operators = Save Our Stages (SOS)
- \$15 Billion allocated including \$2 billion reserved for persons or entities with 50 FTEs or fewer
- **When? According to SBA contacts, estimates for starting are late February (SBA required to deliver plan by February 10<sup>th</sup>)**
- **An applicant may have received a PPP forgivable loan in 2020, but cannot have received or apply for a PPP loan in 2021 (PPP app can be submitted if the SVO app is declined)**
- Revenue Decline Requirement: the organization must be able to demonstrate 25% **gross earned revenue** loss in any one calendar quarter of 2020 compared with than the same calendar quarter of 2019.
- Revenue Decline Prioritization for Applying:
  - 3 priority schedules
  - Defined as **revenue (earned or gross?: unanswered by SBA)** loss April through December 2020 compared to the same period in 2019
  - Percentages range from 90% to 70% to 25% based on the priority period
- Grant amount will be either:
  - For an eligible entity in operation on January 1, 2019, grants will be for an amount equal to 45% of their 2019 **gross earned revenue** OR \$10 million, whichever is less.
  - For an eligible entity that began operation after January 1, 2019, grants will be for the average monthly gross revenue for each full month you were in operation during 2019 multiplied by six (6) OR \$10 million, whichever is less.

# Earned Income

SBA definition of “earned revenue” and “gross earned revenue” in SVO FAQ 1/27

- Earned revenue = only monies organizations receive from the sale of goods or services. Does not include other sources of funds that an organization may receive, such as donations, sponsorships, governmental assistance, or returns on investments.
- Gross earned revenue = the total of earned revenue from various sales of goods or services, such as admission tickets, merchandise, food and beverages, advertising sales and contracted presentation income.
- Examples are outlined regarding what to include in earned revenue and what not to include: <https://www.sba.gov/sites/default/files/2021-01/1-27-21%20SVOG%20FAQs-FINAL-508.pdf>
- SBA using the accrual method of accounting for determining revenue.
- **Still need clarification on revenue for grant prioritization schedule: is loss based on gross revenue or earned revenue?**

# Eligibility

- The business entity must have been “fully operational” on February 29, 2020.
- The business entity must be able to demonstrate 25% gross earned revenue loss in any one calendar quarter of 2020 compared with than the same calendar quarter of 2019.
- The business entity must be operating or intending to resume operations in the future.
  - How will this be addressed by the SBA as related to COVID health/safety restrictions?
- Specifies further *live event-related* requirements for each category of eligibility.
- Relief funds already accessed through the CARES act will not count as revenue for this calculation (ex. PPP is not counted as revenue).
- May not be more than 2 of the following: Over 500 FTEs; owning or operating entities in more than 1 country; owning or operating entities in more than 10 states.
- Exclusions: May not be an issuer of securities listed on the national securities exchange. May not receive more than 10% of 2019 funding from federal sources (excluding disaster relief).

# Eligibility: Entity Type

Eligible Entities (nonprofit, for profit, government-owned, sole proprietors):

- Live venue operator or promoter
- Theatrical producer
- Live performing arts organization operator
- Relevant museum operators
- Motion picture theatre operator
- Talent representatives

# Live venue operator or promoter, theatrical producer or live performing arts organization operator eligibility

- Live venue operator or promoter, theatrical producer or live performing arts organization operator – For an individual or an entity, which may be for-profit, nonprofit, or government-owned, to qualify as a live venue operator or promoter, theatrical producer or live performing arts organization operator, it must either:
  - Eligibility Scenario #1:
    - The business entity must, as a principal business activity, organize, promote, produce, manage, or host live concerts, comedy shows, theatrical productions, or other events by performing artists.
    - A cover charge through ticketing or front door entrance fee must be applied.
    - Performers must be paid in an amount based on percentage of sales, a guarantee in writing or standard contract, or another mutually beneficial formal agreement.
    - At least 70% of the entity’s earned revenue is derived from cover charges or ticket sales, production fees or production reimbursements, nonprofit educational initiatives, or the sale of event beverages, food, or merchandise in conjunction with a live event.
  - Eligibility Scenario #2:
    - The business entity, as a principal business activity, makes available for purchase by the public an average of not less than 60 days before the date of the event tickets to live concerts, comedy shows, theatrical productions, or other events by performing artists.
    - Performers must be paid in an amount based on percentage of sales, a guarantee in writing or standard contract, or another mutually beneficial formal agreement.

# Eligibility for other entities

- ***Motion Picture Theatre Operator*** – For an individual or entity, which may be for-profit, nonprofit, or government-owned, to qualify as a motion picture theatre operator, it must have as its principal business activity the ownership or operation of at least one place of public accommodation for the purpose of showing movies for a fee. Additional venue requirements apply to the spaces that qualify as a motion picture theatre.
- ***Relevant Museums Operator*** – For an individual or entity to qualify as a relevant museum operator, it must operate a public, tribal or private **nonprofit** agency or institution organized on a permanent basis for essentially educational, cultural heritage, or aesthetic purposes. Additional venue requirements apply to the spaces that qualify as a relevant museum.
- ***Talent Representative*** – For a person or entity that is an agent or manager, which may be for-profit, nonprofit or government-owned, to qualify as a talent representative: (i) 70% of its operations must involve representing or managing artists and entertainers; (ii) it must book or represent musicians, comedians, actors or similar performing artists primarily at live events in venues or at festivals; and (iii) such performers must be paid in an amount that is based on the number of tickets sold, or a similar basis (*e.g.*, entrance fees).

# Venue Eligibility Requirements

- For **live venue operators, promoters, theatrical producers or live performing arts organization operators**, the venues at which/for which events are promoted, produced, managed or hosted events, and for **talent representatives**, the venues at which the artists/entertainers represented or managed perform must:
  - contain a defined performance and audience space, mixing equipment, a public address system and a lighting rig;
  - hire at least one individual to do at least **two** of the following activities: (i) sound engineer; (ii) booker; (iii) promoter; (iv) stage manager; (v) security personnel; (vi) box office manager;
  - have paid tickets or cover charges to attend most performances;
  - pay artists “fairly” (e., artists do not play solely for free or for tips);
  - market performances (in print, online, mass media or on social media); and
  - solely for nonprofit venues that produce free events, produce events managed primarily by paid employees and not volunteers.
- For **motion picture theatre operators**, a motion picture theatre must: (i) have at least one auditorium that includes a movie screen and fixed audience seating; (ii) have a projection booth (or other space) with at least one projector; (iii) have paid ticketing; and (iv) market movies (in print, online, mass media or on social media).
- For **relevant museum operators**, a relevant museum must have: (i) been serving as a relevant museum as its principal business activity; (ii) indoor exhibition space that is a component of the principal business activity and which has been subject to pandemic-related occupancy restrictions; and (iii) at least one auditorium, theatre, performance or lecture hall with **fixed audience seating and regular programming. Addressed in SBA SVO FAQ.**

# SBA Definitions

How is “fixed seating” being defined?

- Fixed seating is seating permanently fixed to the floor or ground, per the Economic Aid Act.
- Applies to museums and movie theaters

How is “regular programming” being defined?

- While it may vary depending on the circumstances, generally the SBA is defining regular programming to mean programming provided on an ongoing and near-continuous basis of an average of at least four times a month over the course of a year in its qualifying theater, lecture hall, or similar venue.
- Applies to museums



# Grant Award Schedule

First Priority: 1st 14 days of grant awards

- Entities that suffered a 90% or greater **revenue** loss between April 2020 through December 2020 due to the COVID-19 pandemic.

Second Priority: Next 14 days of grant awards

- Entities that suffered a 70% or greater **revenue** loss between April 2020 through December 2020 due to the COVID-19 pandemic.

Third Priority: Beginning 28 days after First & Second Priority Awards are made

- Entities that suffered a 25% or greater **revenue** loss between April 2020 through December 2020 due to the COVID-19 pandemic.

Supplemental Funding: Available after First & Second Priority

- Recipients of First and Second Priority round who suffered a 70% or greater revenue loss for the most recent calendar quarter (as of 04-01-21 or later)

**Gross revenue vs gross earned income?: Waiting on SBA definition**

# Eligible Costs: Use of Grant Funds

## Eligible Costs:

- Grants may be used for costs incurred from March 1, 2020 through December 31, 2021 (and supplemental grants may be used from March 1, 2020 to June 30, 2022).
- Allowable expenses include payroll, including payments to independent contractors; rent; fixed costs like mortgage and debt payments; as well as maintenance expenses, administrative costs, and other expenses.
- SBA specifics to note (PPP similarities):
  - Scheduled debt payments (not including prepayment of principal) on any indebtedness incurred in the ordinary course of business prior to 02-15-20)
  - Payments to independent contractors (not to exceed \$100K in annual compensation per contractor)
  - Operating leases in effect as of 02-15-20
  - Advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production. (May not be primary use of funds.)
- Prohibited expenses include the purchase of real estate, investment or re-loan of funds, and political contributions.

# PPP vs SVO: Real World Example

- **Arts Organization (Budget \$220,000 with 300 seats)**
  - PPP 2<sup>nd</sup> Draw using 2019 payroll: \$20,072 (covers 2 months of payroll and overhead)
  - Gross earned income in 2019: \$75,536, so SVO 45% would be \$33,991.20
  - Revenue loss (using gross revenue) puts the organization in 3<sup>rd</sup> priority cycle
  - Decision: applied for PPP 2nd Draw
  
- **Arts Organization (Budget \$4.2 million with 300 seats)**
  - PPP 2<sup>nd</sup> Draw using 2019 payroll: \$312,500
  - Gross earned income in 2019: \$2.3 million, so SVO 45% would be \$1,035,000
  - What should they do? Considerations:
    - Timeframe for the SVO
    - What grant cycle will they be in? (The answer will depend on the SBA definition of revenue loss as gross or earned)

# PPP vs SVO Considerations

- Criteria
  - Does your organization qualify? (based on criteria known at this time)
  - If qualified for SVO, in most cases the funding would be more than PPP
- Application requirements
  - PPP app: fairly simple and can submit same documentation
  - SVO app: not available yet; will require a DUNS number and active System for Award Management (SAM.gov) account (can take 2 weeks to secure)
- Timeframe for funding
  - PPP ends March 31<sup>st</sup>
    - Will there be more funding if it runs out?
  - SVO rollout?
    - Estimates are late February
    - How long will SVO funding last with different grant cycles?

# QUESTIONS?