

NFIB UPDATE

Weekly Briefing for Small Business

PPP/ERTC fix

Special Guest – Jessica Brown, Esq. with Gibson, Dunn & Crutcher LLP

Beth Milito and Holly Wade, NFIB

**January 13, 2021 – Common Employer Questions Related to the COVID vaccine
and PPP 2nd Loan Application**



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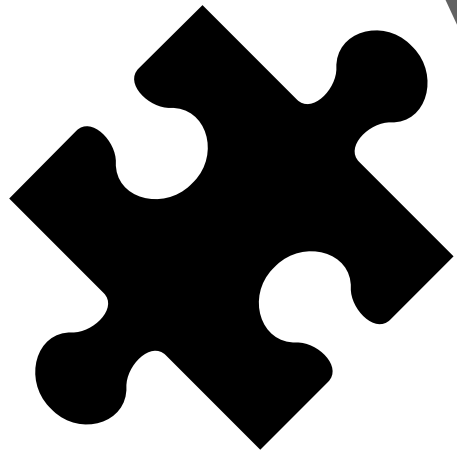
DISCLAIMER

- The materials and information provided in this webinar and on NFIB's website are for informational purposes only and not for the purpose of providing legal or tax advice. You should contact your attorney and/or tax professional to obtain advice with respect to any particular issue or problem.
- This is based on information available by 1/13/21.

Agenda

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- Common Employer Questions Related to the COVID vaccine
 - Covid-19 Small Business Resources
 - Step-by-Step Guide to the PPP 2nd Loan Application
 - Other Small Business Finance Programs
 - Send questions to info@nfib.org

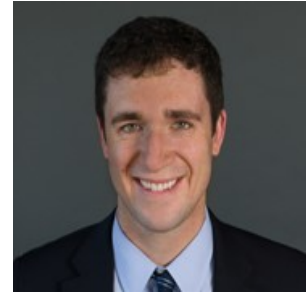
Covid-19 Vaccine: What Employers Should Know



GIBSON DUNN



Jessica Brown is a partner in the Denver office of Gibson, Dunn & Crutcher and a member of the firm's Labor and Employment and White Collar Defense and Investigations practice groups. She has substantial experience conducting and managing workplace investigations and working with clients to address whistleblower complaints on a wide range of topics. Jessica has been ranked by Chambers U.S.A. for 16 consecutive years as a leading Labor & Employment lawyer and is currently ranked in Band 1. She also is the current President of the Colorado Bar Association.



Daniel Rauch is an associate attorney in the Denver office of Gibson, Dunn & Crutcher, where he practices in the firm's litigation department. Prior to joining Gibson Dunn, Mr. Rauch served as Counsel to the Colorado Attorney General, where he litigated and argued criminal and constitutional appeals on behalf of the State of Colorado. At the start of his legal career, Mr. Rauch served as law clerk to the Honorable Neil M. Gorsuch on the United States Court of Appeals for the Tenth Circuit.



GIBSON DUNN

National Federation of Independent Business Presentation

COVID-19 Vaccines in the Workplace: An Employer “Playbook”

Jessica Brown
Daniel E. Rauch

January 13, 2021

The end of the beginning...



Sandra Lindsay, pictured, as first U.S. nurse to receive the COVID-19 Vaccine
Credit: N.Y. Times

Today's Roadmap

Overview

Current State of Play: Virus and Vaccines

Overall Considerations: Mandatory Versus Voluntary

Key Steps for Employers

Current State of Play

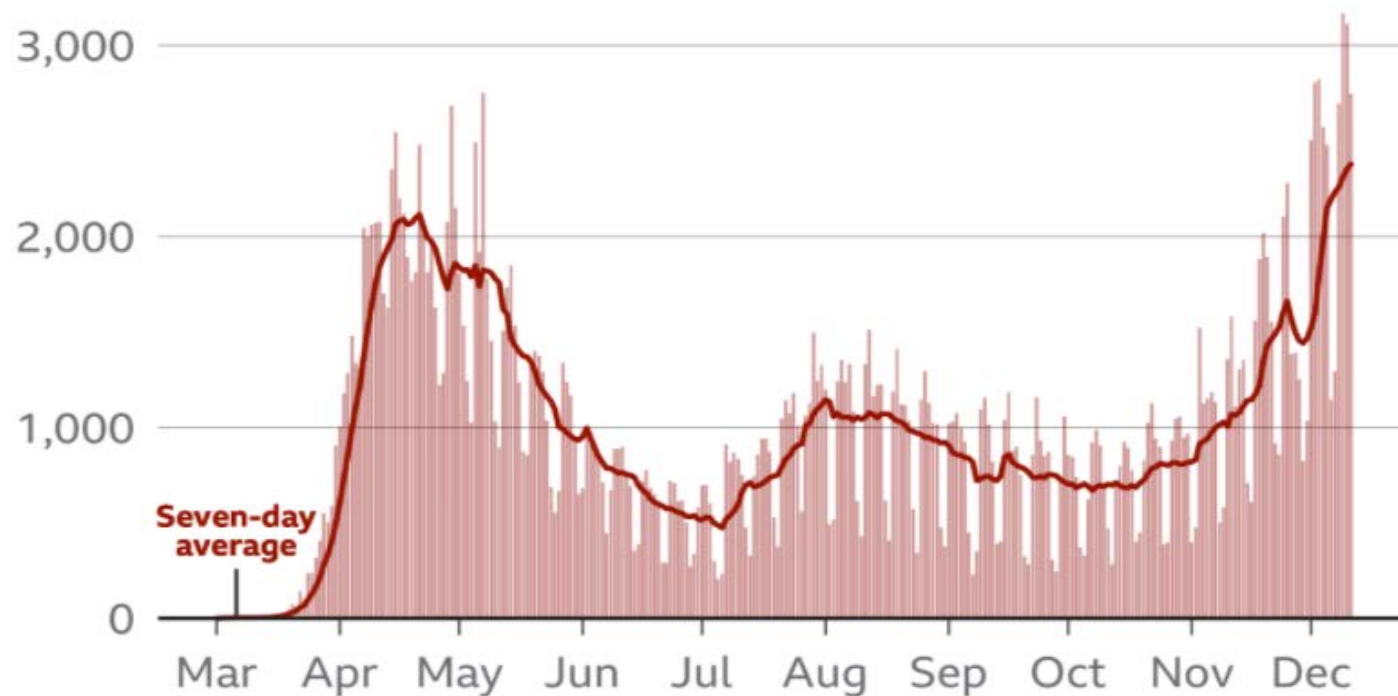
The vaccines have arrived, and should be at scale by June

Vaccine	Pfizer-BioNTech	Moderna
Effectiveness Rate	≈ 90%	≈ 95%
Date of FDA Approval	December 11, 2020	December 18, 2020
Dose Modality	Two-dose delivery	Two-dose delivery
Projected U.S. Distribution	200 million total (by July 21, 2021)	200 million total (by June, 2021)

Not a moment too soon...

Deaths now above levels seen in spring

Number of daily reported coronavirus deaths in the US



Source: COVID Tracking Project

BBC

The most frequent question: what are workplaces doing?

- Some are considering mandates.
- Some are considering voluntary programs, ranging from persuasion campaigns to providing free on-site vaccinations to paying workers to be vaccinated.
- Some are considering making vaccines available without expressly endorsing them.
- Many are taking a “wait-and-see” approach.

Overall Considerations: Mandatory vs. Voluntary Workplace Rules

Employers likely can make vaccination a condition of at-will employment or a condition to return to work.

If an employer **requires vaccinations when they are available, how should it respond to an employee who indicates that he or she is unable to receive a COVID-19 vaccination because of a sincerely held religious practice or belief?**

... If an employee cannot get vaccinated for COVID-19 because of a disability or sincerely held religious belief, practice, or observance, and there is no reasonable accommodation possible, then **it would be lawful for the employer to exclude the employee from the workplace.**

- EEOC, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, December 16, 2020 (emphases added).

But *should* you?



But should you?

It depends

Reasons to Consider a Mandate

- Protecting Worker Health.
- Ensuring Workers Actually Get Vaccinated.
- Reducing the Costs of Absences and Lost Productivity.
- Getting and Staying Open.
- Reduced Civil Liability Risk.
- Possible Protection from State or Federal Regulatory Action (*e.g.*, OSHA finding non-vaccination to be a dangerous work condition).

Reasons to Consider a Voluntary Approach

- Employee Morale and Retention.
- Avoids Administrative Challenge of Administering Medical and Religious Exceptions.
- Less Liability For Medical or Religious Discrimination Claims.
- Mandate May Be Less Important in Certain Industries.

Key Steps for Any Employer

KEY STEP: Determine if you have a right to mandate vaccine

- Relevant even if you don't plan to make vaccination a condition of employment, as it may still be a condition for certain employment *activities* (e.g., physical return to work).
- Review any applicable collective bargaining agreements.
- Review any other applicable employment agreements.
- Review federal, state, and local laws and guidance — which can and will change quickly...

The legal environment will evolve fast...

KY GENERAL ASSEMBLY

Kentucky legislator pre-files bill prohibiting colleges from mandating vaccines

Joe Sonka Louisville Courier Journal

Published 5:32 p.m. ET Dec. 4, 2020 | Updated 5:55 p.m. ET Dec. 4, 2020

[View Comments](#)



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Bill in New York State Assembly seeks to empower health department to mandate COVID-19 vaccine

The sponsor of the bill says it would be a prudent measure if not enough people are willing to voluntarily roll up their sleeves



And may include OSHA (or state-OSHA requirements)...

The employer shall make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure [to bodily fluids], and post-exposure evaluation and follow-up to all employees who have had an exposure incident... [t]he employer shall assure that employees who decline to accept hepatitis B vaccination offered by the employer sign the statement in appendix A.

- 29 CFR 1910.1030 *et seq.* (OSHA Bloodborne Pathogen Standard) (emphases added).

KEY STEP: Prepare For Exemption Requests

- If voluntary, consider requiring attestation that workers understand the risk . . . but recognize that liability waivers may not be enforceable.
- If mandatory, by law still must have disability (ADA) and religious (Title VII) exemption accommodation programs:
 - Remember, these programs do not guarantee a right to opt-out of vaccination — only the right to an interactive process to assess if accommodation is possible without imposing “undue hardship” on the workplace; sometimes, this will not be possible.
 - And employees are not necessarily entitled to a work-from-home accommodation. Employers may in some circumstances instead require that workers come to work with masks and social distancing, for example.

Remember ...

Managers and supervisors are reminded that **it is unlawful to disclose that an employee is receiving a reasonable [vaccine-related] accommodation or **retaliate against an employee for requesting an accommodation.****

- EEOC, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, December 16, 2020 (emphases added).

KEY STEP: Determine Allocation and Availability

- Early updates suggest the Biden Administration will, in a change from current policy, push to release all vaccine doses for distribution as soon as possible, rather than holding some back for second doses.
- President-Elect Biden has also expressed a willingness to use the Defense Production Act (DPA) to accelerate production rates.
- The mechanics of distribution, however, will remain at the state level, so the rate at which vaccinations take place will continue to vary place to place.

KEY STEP: Determine Allocation and Availability

- A major, and thus-far unresolved, issue is what groups will have access to the vaccine first.
- The CDC issued guidance this December prioritizing (1) frontline medical care providers, then (2) “frontline essential workers,” and then (3) other essential workers.
- But this guidance is *not* binding on the states.

Deep dive: Vaccine Allocations

- CDC Guidance (December 22, 2020): CDC recommends that [after frontline medical workers and vulnerable persons in long-term care] vaccination should be offered to . . . [f]rontline essential workers such as fire fighters, police officers, corrections officers, food and agricultural workers, United States Postal Service workers, manufacturing workers, grocery store workers, public transit workers, and those who work in the educational sector (teachers, support staff, and daycare workers).

KEY STEP: Determine whether, and to what extent, you will administer vaccines directly or contract with a third-party to administer vaccines

- Administering vaccines directly, on-site, can save worker time and build buy-in.
- In the event a vaccine does injure an employee (such as by side effects), employers may be protected by the Public Readiness and Emergency Preparedness (PREP) Act, and may also be covered by workers' compensation.
- Contracting with a third-party to administer the vaccine can further shield from vaccine administration liability.
- Note, though, that employers who administer or contract to have the vaccine administered may take on medical privacy obligations under the ADA and the Genetic Information Non-Discrimination Act (GINA) — though requesting proof of receipt of vaccination is not, by itself, a disability- or genetic- related inquiry, so employers can do so.

KEY STEP: Build workplace buy-in

- Ensure buy-in: Matters for mandatory *or* voluntary program.
- Develop clear workplace communications — explain *why* the policy is in place.
- Consider tying vaccine requirements to re-opening and a return to normal, to emphasize the benefits.
- Consider reducing the “cost” of vaccination
 - Direct costs (*e.g.*, covering extra paid sick time in event workers have adverse reaction, paying for vaccine administrative costs even if out-of-plan for workers).
 - Indirect costs (*e.g.*, reducing travel time by having on-site vaccination).
- Prepare for some workplace disagreement and for hard conversations.

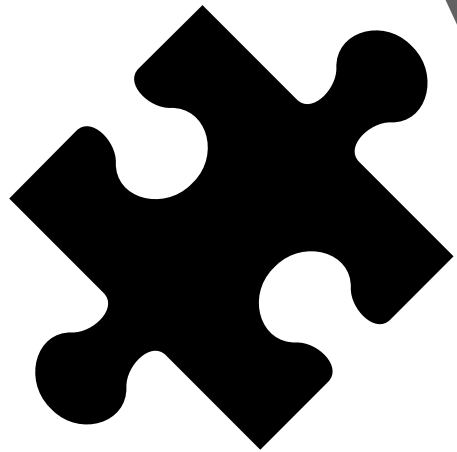
KEY STEP: Consider Thoughtful Re-Opening

- In the short term, mask mandates and distancing may still be required even for vaccinated workers.
- Longer-term, however, permitting relatively more freedom to vaccinated workers can build buy-in around vaccination.

KEY STEP: Prepare for, and Weigh Risks of, Civil Liability

- Under almost any policy, there are risks of civil liability.
- Employers that rigorously mandate vaccines may risk discrimination claims if they fail to offer legally required accommodation procedures. They may also face other claims from employees who object to the requirement.
- Conversely, if a company does not require a vaccinated workforce, then customers, contractors, or other stakeholders might sue the employer for failing to impose a mandate, on the theory that this fell below a reasonable standard of care.

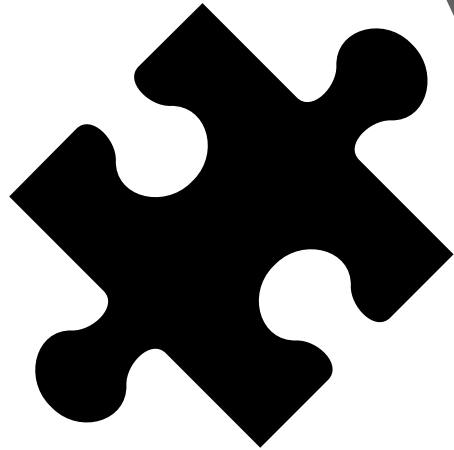
Covid-19 Small Business Resources



COVID-19 Resources

-
- [First PPP Draw Borrower Application \(Updated 1/8/21\)](#)
 - [Second PPP Draw Borrower Application \(Released 1/8/21\)](#)
 - [NFIB PPP Second Draw Tip Sheet](#)
 - [PPP Loan Forgiveness Form 3508S Application Instructions](#)
 - [PPP Loan Forgiveness Form 3508S Application](#)
 - [PPP Loan Forgiveness Form 3508EZ Application Instructions](#)
 - [PPP Loan Forgiveness Form 3508EZ Application](#)
 - [PPP Loan Forgiveness Form 3508 Application Instructions](#)
 - [PPP Loan Forgiveness Form 3508](#)
 - [AICPA PPP Loan Forgiveness Calculator \(updated 11/16/20\)](#)
 - [NFIB Coronavirus Resources \(including webinar recordings\)](#)
 - [NFIB FFCRA Tax Credit Tip Sheet](#)
 - [NFIB Covid-19 in the Workplace Tip Sheet](#)

Step-by-Step Guide to the PPP 2nd Loan Application



Second PPP Loan

Eligibility:

- ❖ 300 or fewer employees (including sole proprietor, independent contractor, or self-employed individual),
- ❖ 25% or more reduction in gross receipts in Q1, Q2, Q3, Q4 of 2020 compared to same quarter in 2019 or 25% reduction in annual receipts in 2020 compared to 2019.
- ❖ Used all the funds from the first PPP loan (not required to have applied for forgiveness yet)
- ❖ Been in business prior to February 15, 2020

SBA Documents:

[Top-line Overview of PPP Second Draw Loans](#)

[Paycheck Protection Program Second Draw Borrower Application Form](#)



PPP Second Draw Borrower Application Form 2483-SD



Paycheck Protection Program Second Draw Borrower Application Form

OMB Control No.: 3245-0417
Expiration Date: 7/31/2021

Check One: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent Contractor <input type="checkbox"/> Self-Employed Individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(6) organization <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Housing cooperative <input type="checkbox"/> Tribal Business <input type="checkbox"/> Other		DBA or Tradename (if applicable) _____		Year of Establishment (if applicable) _____	
Business Legal Name _____				NAICS Code _____	
Business Address (Street, City, State, Zip Code - No P.O. Box addresses allowed) _____				Business TIN (EIN, SSN) _____	
Primary Contact _____				Email Address _____	
Average Monthly Payroll:	\$ _____	x 2.5 (or x 3.5 for NAICS 72 applicants) equals: Loan Request Amount (may not exceed \$2,000,000):	\$ _____	Number of Employees (including affiliates, if applicable; may not exceed 300): _____	
Purpose of the loan (select all that apply):	<input type="checkbox"/> Payroll Costs	<input type="checkbox"/> Rent / Mortgage Interest	<input type="checkbox"/> Utilities	<input type="checkbox"/> Covered Operations Expenditures	
	<input type="checkbox"/> Covered Property Damage	<input type="checkbox"/> Covered Supplier Costs	<input type="checkbox"/> Covered Worker Protection Expenditures	<input type="checkbox"/> Other (explain): _____	
PPP First Draw SBA Loan Number: _____					
Reduction in Gross Receipts of at Least 25% (Applicants for loans of \$150,000 or less may leave blank but must provide upon or before seeking loan forgiveness or upon SBA request):		2020 Quarter (e.g., 2Q 2020): Gross Receipts: \$ _____	Reference Quarter (e.g., 2Q 2019): Gross Receipts: \$ _____		

Applicant Ownership

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

If questions (1), (2), (4), or (5) are answered "Yes," the loan will not be approved.

Question	Yes	No
1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?		
2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is (a) currently delinquent, or (b) has defaulted in the last 7 years and caused a loss to the government?		
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management (including a management agreement) with any other business? If yes, list all such businesses (including their TINs if available) and describe the relationship on a separate sheet identified as addendum A.		
4. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant presently incarcerated or, for any felony, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction? Initial here to confirm your response to question 4 --		
5. Within the last 5 years, for any felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance, or within the last year, for any other felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; or 4) commenced any form of parole or probation (including probation before judgment)? Initial here to confirm your response to question 5 --		
6. Is the United States the principal place of residence for all employees included in the Applicant's payroll calculation above?		
7. Is the Applicant a franchise?		
8. Is the franchise listed in SBA's Franchise Directory? If yes, enter SBA Franchise Identifier Code here: _____		





**Paycheck Protection Program
Second Draw Borrower Application Form**

By Signing Below, You Make the Following Representations, Authorizations, and Certifications:

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) and the Department of the Treasury (Treasury) implementing Second Draw Paycheck Protection Program Loans under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the Paycheck Protection Program Rules).
- The Applicant, together with its affiliates (if applicable), (1) is an independent contractor, self-employed individual, or sole proprietor with no employees; (2) employs no more than 300 employees; or (3) if NAICS 72, employs no more than 300 employees per physical location; (4) if a news organization that is majority owned or controlled by a NAICS code 511110 or 5151 business or a nonprofit public broadcasting entity with a trade or business under NAICS code 511110 or 5151, employs no more than 300 employees per location.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rules including the prohibition on using loan proceeds for lobbying activities and expenditures. If Applicant is a news organization that became eligible for a loan under Section 317 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, proceeds of the loan will be used to support expenses at the component of the business concern that produces or distributes locally focused or emergency information.
- I understand that SBA encourages the purchase, to the extent feasible, of American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

The authorized representative of the Applicant must certify in good faith to all of the below by initialing next to each one:

- _____ The Applicant was in operation on February 15, 2020, has not permanently closed, and was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees, or had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- _____ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
- _____ The Applicant has realized a reduction in gross receipts in excess of 25% relative to the relevant comparison time period. For loans greater than \$150,000, Applicant has provided documentation to the lender substantiating the decline in gross receipts. For loans of \$150,000 or less, Applicant will provide documentation substantiating the decline in gross receipts upon or before seeking loan forgiveness for the Second Draw Paycheck Protection Program Loan or upon SBA request.
- _____ The Applicant received a First Draw Paycheck Protection Program Loan and, before the Second Draw Paycheck Protection Program Loan is disbursed, will have used the full loan amount (including any increase) of the First Draw Paycheck Protection Program Loan only for eligible expenses.
- _____ The funds will be used to retain workers and maintain payroll; or make payments for mortgage interest, rent, utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures as specified under the Paycheck Protection Program Rules; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.
- _____ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, covered utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures, and not more than 40% of the forgiven amount may be for non-payroll costs. If required, the Applicant will provide to the Lender and/or SBA documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of eligible expenses for the covered period following this loan.
- _____ The Applicant has not and will not receive another Second Draw Paycheck Protection Program Loan.
- _____ The Applicant has not and will not receive a Shuttered Venue Operator grant from SBA.
- _____ The President, the Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person as determined under applicable common law, does not directly or indirectly hold a controlling interest in the Applicant, with such terms having the meanings

provided in Section 322 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.

- _____ The Applicant is not an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).
- _____ The Applicant is not a business concern or entity (a) 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 (b) 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.
- _____ The Applicant is not required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 612).
- _____ The Applicant is not a business concern or entity primarily engaged in political or lobbying activities, including any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents.
- _____ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 U.S.C. 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- _____ I acknowledge that the Lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge, and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Signature

Signature of Authorized Representative of Applicant

Date

Print Name

Title



**Paycheck Protection Program
Second Draw Borrower Application Form**

OMB Control No.: 3245-0417
Expiration Date: 7/31/2021

Check One: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent Contractor <input type="checkbox"/> Self-Employed Individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(6) organization <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Housing cooperative <input type="checkbox"/> Tribal Business <input type="checkbox"/> Other	DBA or Tradename (if applicable)		Year of Establishment (if applicable)		
	Business Legal Name		NAICS Code		
	Business Address (Street, City, State, Zip Code - No P.O. Box addresses allowed)		Business TIN (EIN, SSN)	Business Phone	
		Primary Contact	Email Address		
Average Monthly Payroll:	\$	x 2.5 (or x 3.5 for NAICS 72 applicants) equals Loan Request Amount (may not exceed \$2,000,000):	\$	Number of Employees (including affiliates, if applicable; may not exceed 300):	
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	Gross Receipts:	\$	Gross Receipts	\$	



Business activity code on your IRS income tax filing



Full and part time each count as 1

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Paycheck Protection Program Second Draw Borrower Application Form

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

 The Applicant has realized a reduction in gross receipts in excess of 25% relative to the relevant comparison time period. For loans greater than \$150,000, Applicant has provided documentation to the lender substantiating the decline in gross receipts. For loans of \$150,000 or less, Applicant will provide documentation substantiating the decline in gross receipts upon or before seeking loan forgiveness for the Second Draw Paycheck Protection Program Loan or upon SBA request.

 The Applicant received a First Draw Paycheck Protection Program Loan and, before the Second Draw Paycheck Protection Program Loan is disbursed, will have used the full loan amount (including any increase) of the First Draw Paycheck Protection Program Loan only for eligible expenses.

 The funds will be used to retain workers and maintain payroll; or make payments for mortgage interest, rent, utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures as specified under the Paycheck Protection Program Rules; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

 I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, covered utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures, and not more than 40% of the forgiven amount may be for non-payroll costs. If required, the Applicant will provide to the Lender and/or SBA documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of eligible expenses for the covered period following this loan.

 The Applicant has not and will not receive another Second Draw Paycheck Protection Program Loan.

 The Applicant has not and will not receive a Shuttered Venue Operator grant from SBA.

 The President, the Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person as determined under applicable common law, does not directly or indirectly hold a controlling interest in the Applicant, with such terms having the meanings

provided in Section 322 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.

The Applicant is not an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

The Applicant is not a business concern or entity (a) 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 (b) 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.

The Applicant is not required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 612).

The Applicant is not a business concern or entity primarily engaged in political or lobbying activities, including any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents.

I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 U.S.C. 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

I acknowledge that the Lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge, and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Signature of Authorized Representative of Applicant

Print Name

Date

Title



Paycheck Protection Program Second Draw Borrower Application Form

Purpose of this form:

This form is to be completed by the authorized representative of the Applicant and *submitted to your SBA Participating Lender*. Submission of the requested information is required to make a determination regarding eligibility for financial assistance. Failure to submit the information would affect that determination.

Instructions for completing this form:

With respect to "purpose of the loan," payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave (except those paid leave amounts for which a credit is allowed under FFCRA Sections 7001 and 7003); allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage (including insurance premiums), group life, disability, vision, or dental insurance, and retirement benefits; payment of state and local taxes assessed on compensation of employees; and, for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

For purposes of calculating "Average Monthly Payroll," most Applicants will use the average monthly payroll for 2019 or 2020, excluding costs over \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, for each employee. For seasonal businesses, the Applicant may elect to instead use average total monthly payroll for any twelve-week period selected by the Applicant between February 15, 2019 and February 15, 2020, excluding costs over \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, for each employee. For new businesses without 12 months of payroll costs but that were in operation on February 15, 2020, average monthly payroll may be calculated based on the number of months in which payroll costs were incurred, excluding costs over \$100,000 on an annualized basis for each employee, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, for each employee. For farmers and ranchers that operate as a sole proprietorship or as an independent contractor, or who are eligible self-employed individuals and report farm income or expenses on a Schedule F (or any equivalent successor IRS form), payroll costs are computed using eligible payroll costs for employees, if any, plus the lesser of \$100,000 and the difference between gross income and any eligible payroll costs for employees, as reported on a Schedule F. For Applicants that file IRS Form 1040, Schedule C, payroll costs are computed using line 31 net profit amount, limited to \$100,000, plus any eligible payroll costs for employees. For Applicants that are partnerships, payroll costs are computed using net earnings from self-employment of individual general partners, as reported on IRS Form 1065 K-1, reduced by section 179 expense deduction claimed, unreimbursed partnership expenses claimed, and depletion claimed on oil and gas properties, multiplied by 0.9235, that is not more than \$100,000, plus any eligible payroll costs for employees.

In determining whether the Applicant experienced at least a 25% reduction in gross receipts, for loans above \$150,000, the Applicant must identify the 2020 quarter meeting this requirement, identify the reference quarter, and state the gross receipts amounts for both quarters, as well as provide supporting documentation. For loans of \$150,000 and below, these fields are not required and the Applicant only must certify that the Applicant has met the 25% gross receipts reduction at the time of application; however, upon or before seeking loan forgiveness (or upon SBA request) the Applicant must provide documentation that identifies the 2020 quarter meeting this requirement, identifies the reference quarter, states the gross receipts amounts for both quarters, and supports the amounts provided. For all loans, the appropriate reference quarter depends on how long the Applicant has been in operation:

- For all entities other than those satisfying the conditions set forth below, Applicants must demonstrate that gross receipts in any quarter of 2020 were at least 25% lower than the same quarter of 2019. Alternatively, Applicants may compare annual gross receipts in 2020 with annual gross receipts in 2019; Applicants choosing to use annual gross receipts must enter “Annual” in the 2020 Quarter and Reference Quarter fields and, as required documentation, must submit copies of annual tax forms substantiating the annual gross receipts reduction.
- For entities not in business during the first and second quarters of 2019 but in operation during the third and fourth quarters of 2019, Applicants must demonstrate that gross receipts in any quarter of 2020 were at least 25% lower than either the third or fourth quarters of 2019.
- For entities not in business during the first, second, and third quarters of 2019 but in operation during the fourth quarter of 2019, Applicants must demonstrate that gross receipts in any quarter of 2020 were at least 25% lower than the fourth quarter of 2019.
- For entities not in business during 2019 but in operation on February 15, 2020, Applicants must demonstrate that gross receipts in the second, third, or fourth quarter of 2020 were at least 25% lower than the first quarter of 2020.



Gross receipts includes 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. Generally, receipts are considered "total income" (or in the case of a sole proprietorship "gross income") plus "cost of goods sold" and excludes net capital gains or losses as these terms are defined and reported on IRS tax return forms. Gross receipts do not include the following: 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 excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, investment income, and employee-based costs such as payroll taxes, may not be excluded from gross receipts. Gross receipts of a borrower must be aggregated with gross receipts of its affiliates. For a nonprofit organization, veterans organization, nonprofit news organization, 501(c)(6) organization, and destination marketing organization, gross receipts has the meaning in section 6033 of the Internal Revenue Code of 1986.

For purposes of reporting Number of Employees, sole proprietors, self-employed individuals, and independent contractors should include themselves as employees (i.e., the minimum number in the box "Employees" is one). For NAICS 72 or eligible news organizations, applicants may not exceed 300 per physical location.

For purposes of reporting Year of Establishment, self-employed individuals and independent contractors may enter "NA".

For purposes of reporting NAICS Code, applicants must match the business activity code provided on their IRS income tax filings, if applicable. For purposes of calculating an Applicant's maximum payroll costs, an Applicant may multiply its average monthly payroll costs by 3.5 only if the Applicant is in the Accommodation and Food Services sector and has reported a NAICS code beginning with 72 as its business activity code on its most recent IRS income tax return.

How is the 25% reduction calculated?



Documentation

Bank statements, tax statements, financial statements

Loan of \$150,000 or less don't have to provide documentation at the time of loan application, only when applying for forgiveness

Calculation

Can use either Cash or Accrual accounting method, whichever you normally use
(If you don't know, you probably use cash accounting)

* Do not include unemployment, loans, PPP loan forgiveness or EIDL grant. (Some state or local grants however may be considered income.)



Comparing gross receipts from 2020 to 2019

First see if full-year

Annual 2020

Annual 2019

Second check by quarter

Q1 2020 Jan. – Mar.

Q1 2019 Jan. – Mar.

Q2 2020 Apr. – June

Q2 2019 Apr. – June

Q3 2020 July – Sept.

Q3 2019 July – Sept.

Q4 2020 Oct. – Dec.

Q4 2019 Oct. – Dec.

In business only part of 2019?

N/A

Q1 2019 Jan. – Mar.

N/A

Q2 2019 Apr. – June

Q3 2020 July – Sept.

Q3 2019 July – Sept.

Q4 2020 Oct. – Dec.

Q4 2019 Oct. – Dec.

Started business in 2020, before Feb. 15th?

Q1 2020 Jan. – Mar.

Q2 2020 Apr. – June

Q3 2020 July – Sept.

Q4 2020 Oct. – Dec.

How much can I get with a second PPP loan?



Calculation of Loan Amount

- **2.5 x average monthly payroll costs** for 2019 or 2020
- **3.5 x average monthly payroll costs** for 2019 or 2020 (businesses in hospitality and restaurant industries under NAICS Code 72)

Calculation of Loan Amount Seasonal Employers*

- Seasonal businesses may apply based on the average monthly payroll costs for any 12-week period between February 15, 2019 and February 15, 2020.
- A seasonal employer is defined as one that:
 - “Does not operate for more than 7 months in any calendar year; or
 - During the preceding calendar year, had gross receipts for any 6 months of that year that were not more than 33.33 percent of the gross receipts of the employer for the other 6 months of that year”.

**There is a separate calculation for farmers and ranchers.*

Payroll Costs

- Compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); maximum \$100,000 on an annualized basis.*
- Payment for vacation, parental, family, medical, or sick leave.
- Allowance for separation or dismissal.
- Payment of state and local taxes assessed on compensation of employees.
- **New:** Payment for the provision of employee benefits consisting of group health care or group life, disability, vision, or dental insurance, including insurance premiums, and retirement.
- **For owner employees** (i.e., independent contractor, sole proprietor, or self-employed): cash compensation has been interpreted by the [SBA/Treasury](#) to be W-2 wages or self-employment income that the owner-employee pays self-employment taxes on, such as Schedule C, line 31 or Schedule K-1, line 14a, with cap of \$100,000 on an annualized basis.



**Do not include amounts paid to 1099 contractors; they may apply on their own.*

Payroll Costs for Self Employed without Employees

1. Find or complete your Form 1040, Schedule C for 2019 or 2020.
2. Locate your net profit on line 31. The max for PPP loans is \$100,000 annualized income, so cap any net profit over \$100,000 for the following steps.
3. Divide this total by 12 to find your average monthly net profit.
4. Multiply by 2.5 to determine the PPP loan amount to request to cover 2.5 months of average profits (“payroll”) for a self-employed business.
5. Gather documentation to substantiate this income – 2019 (or 2020) IRS Form 1099-MISC detailing non-employee compensation received (box 7), invoice, or bank statement showing self-employment, and a 2020 invoice or bank statement covering February 15, 2020 at the latest.



Payroll Costs for Self Employed with Employees

1. Find or complete your Form 1040, Schedule C for 2019 or 2020.
2. Locate your net profit on line 31. The max for PPP loans is \$100,000 annualized income, so cap any net profit over \$100,000 for the following steps. If less than zero, set to zero.
3. Add gross wages & tips for employees residing in the US using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c- column 1).
4. Add pre-tax benefits to employees, such as health insurance.
5. Cap all individual employee's wages, tips, and benefits at \$100,000.
6. Add employer health insurance and retirement contributions (found on Form 1040 Schedule C line 14 and 19, respectively), and any state and local taxes on employee compensation that apply to your business.



Payroll Costs for Self Employed with Employees cont.....

7. Divide this total by 12 to find your average monthly net profit.
8. Multiply by 2.5 to determine the PPP loan amount to request.
9. Gather documentation to substantiate this income – 2019 (or 2020) Form 1040 Schedule C, Form 941 and state wage unemployment insurance tax forms from each quarter in 2019 (or 2020) (or tax forms/payroll processor records containing similar information), retirement and health insurance contributions, and an invoice showing operation before February 15th, 2020.

How can I spend the loan to ensure forgiveness?



Eligible PPP Expenses

- Payroll
- Utilities (gas, electricity, water, telephone, internet)
- Rent (real and personal property)
- Mortgage Interest

Choose between
8 to 24 week
covered period

New Eligible Expenses

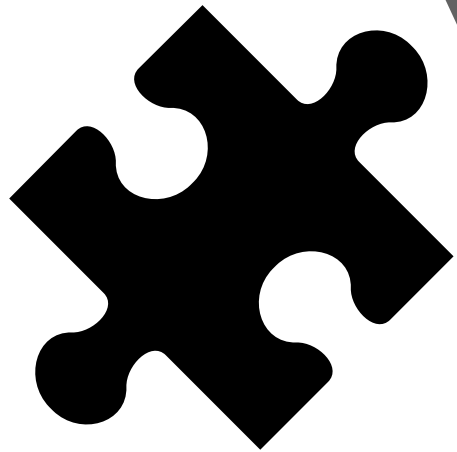
- covered operations expenditure
- covered property damage cost
- covered supplier cost
- covered worker protection expenditure

60/40 rule still applies
Must spend at least 60% of
PPP loan on eligible payroll
expenses

Expanded Eligible PPP Expenses

- **PPE expenses**, covered worker protection and facility modification expenditures, including personal protective equipment, to comply with COVID-19 federal health and safety guidelines.
- **Property damage** costs due to public disturbances that occurred during 2020 that are not covered by insurance
- **Supplier expenditures** 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.
- **Operational payments** for software, cloud computing, and other human resources and accounting needs.

Other Small Business Financial Aid



Additional Funding for EIDL Advance Grants

- \$20 billion for EIDL Advance grants.
- Eligibility: small businesses and nonprofits in low-income communities can receive \$10,000 grants.
- Any small businesses and nonprofits in low-income communities that received an EIDL Advance previously are also eligible to receive the full \$10,000 if their award was less in the first round of grants.

Employee Retention Tax Credit

- Extended to July 1, 2021
- Increase the fully refundable portion of qualified wages from 50% to 70%.
- Employers able to take the Employee Retention Tax Credit and participate in the PPP.
- Excluding wages paid for by PPP loan
- [Find a Tax Expert | Find a Tax Preparer | National Association of Enrolled Agents \(NAEA\)](#)

Extension of Paid Leave Credits

- Extends the refundable payroll tax credits through March 31, 2021. The mandate ends Dec. 31, 2020, but owners can still take advantage of the tax credit until March 31st.
NFIB FFCRA Tax Credit Tip Sheet
- Allows self-employed individuals to use their average daily self-employment income from 2019, rather than 2020, for purposes of computing these credits.



Pandemic Unemployment Assistance

- Extends the Pandemic Unemployment Assistance (PUA) program, which provides continued unemployment assistance to the self-employed, freelancers, gig workers, part-time workers and other individuals in non-traditional employment.
- It also increases the number of weeks of PUA benefits an individual may claim, from 39 to 50.

Direct Stimulus Payments

Provides an additional round of Economic Impact Payments of

- \$600 for individuals earning up to \$75,000 per year,
- \$1,200 for couples making up to \$150,000 per year,
- \$600 payment for each child dependent.

Have questions?
Email us at
info@nfib.org

