



Brewers Association Federal Affairs COVID-19 Relief Bill Break Down

January 7, 2021

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The following summarizes the different portions of the COVID-19 relief bill (signed as a part of the broader package on December 27, 2020) that will most impact small and independent breweries. As such, it simplifies certain concepts and does not attempt to apply the new provisions to business situations. On January 12th, the Brewers Association will also be hosting a webinar for our members, “[Federal Help for Brewers during Uncertain Times: Second Draw PPP Loans and Other Recent Relief](#)”

The Brewers Association wants all breweries to have access to critical information and updates during this challenging time. To ensure no breweries are missing updates due to financial barriers, the BA is again offering all nonmember breweries a temporary membership free of charge.

If you are not currently a Brewers Association member, or if you are unsure, please [contact the membership department](#) to gain access to online resources, including additional information about the recent federal relief packages and the impact on your brewery. [Reach out now](#) for access to the member-only webinar on Jan. 12, which examines the recent COVID relief package and explores the relevant provisions for small and independent brewers.

Brewers consequently should not view this summary as legal or business advice, and all breweries should work with their counsel, accountants, and banks to do what is best for their businesses.

The Paycheck Protection Program (PPP): The COVID-19 relief bill provided an additional \$284 billion for first and second PPP loans.

- **Continues the PPP:** Businesses that have not received a PPP loan may apply for one. To be eligible for a PPP loan the business must have been open by February 15, 2020.
- **Allows “Second Draw” PPP loans:** Allows the hardest-hit small businesses to apply for a second forgivable PPP loan.
 - Only businesses that can demonstrate at least a 25 percent reduction in gross receipts in **either** the first, second, third, or fourth quarter of 2020 relative to the same 2019 quarter are allowed to apply. Alternative measuring rules are in place for businesses who were not open in 2019.
 - Eligibility is limited to small businesses with 300 or fewer employees.
 - Businesses must also show that they have already or will use the full amount of their first PPP loan.
 - Maximum amount of a “second draw” PPP loan is \$2 million.
 - Borrowers of a PPP second draw loan would be eligible for loan forgiveness equal to the sum of their payroll costs, as well as covered mortgage, rent, and utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred during the covered period.
 - In order to receive full forgiveness, the business must meet 60/40 cost allocation between payroll and non-payroll costs (see “Allows use of PPP funds for additional eligible expenses” below).
- **Access to increased PPP funds for certain businesses.**

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- The legislation provides restaurants and hospitality industry businesses in NAICS code group 72 to apply for 3.5 times their monthly payroll (all other businesses qualify for 2.5 times monthly payroll)
- Some, but not all, breweries will be eligible for this, depending on their NAICS code.
- If you are unsure of your NAICS code, work with your SBA lender to determine eligibility.
 - Breweries that previously received a PPP loan can see the NAICS code assigned them by the SBA in the spreadsheets linked here: <https://sba.app.box.com/s/5myd1nxutoq8wxecx2562baruz774si6>
 - Spreadsheets are grouped by State (1 = AE-FL; 2 = FL-KS, 3 = KS-NJ; 4 = NJ-PR; 5 = PR-WY; loans above 150K in separate spreadsheet).
 - If you disagree with your NAICS classification, please work with your SBA lender. You can find information about appealing your NAICS code linked here <https://www.sba.gov/about-sba/oversight-advocacy/office-hearings-appeals/naics-appeals>
 - More information about NAICS codes can be found here: <https://www.census.gov/eos/www/naics/faqs/faqs.html>
- **Allows use of PPP funds for additional eligible expenses**
 - Payment for any software, cloud computing, and other human resources and accounting needs.
 - Costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance.
 - 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.
 - 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.
 - Allows loans made under PPP before, on, or after the enactment of this Act to be eligible to utilize the Act's expanded forgivable expenses, except for borrowers who have already had their loans forgiven.
- **Clarifies tax treatment of PPP loans**
 - Clarifies that gross income does not include any amount that would otherwise arise from the forgiveness of a PPP loan.
 - Clarifies that deductions are allowed for otherwise deductible expenses paid with the proceeds of a forgiven PPP loan, and that the tax basis and other attributes of the borrower's assets will not be reduced because of the loan forgiveness.
 - The provision is effective as of the date of enactment of the CARES Act. The provision provides similar treatment for second draw PPP loans, effective for tax years ending after the date of enactment of the provision.
- **Creates a simplified application process for loans under \$150,000**
 - A borrower shall receive forgiveness if a borrower signs and submits to the lender a certification that is not more than one page in length, includes a description of the number of employees the borrower was able to retain because of the covered loan, the estimated total amount of the loan spent on payroll costs, and the total loan amount.
 - The borrower must also attest that borrower accurately provided the required certification and complied with PPP loan requirements. SBA must establish this form within 24 days of enactment and may not require additional materials unless necessary to substantiate revenue loss requirements or satisfy relevant statutory or regulatory requirements. Additionally, borrowers must retain relevant records related to employment for four years and other records for three years. The administrator of the SBA may review and audit these loans to ensure against fraud.
 - At the discretion of the borrower, the borrower may complete and submit demographic information for all PPP loans.

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- The SBA must submit to the Senate and House Small Business Committees a report 45 days after enactment detailing their review and forgiveness audit plan to mitigate risk of fraud and provide monthly reviews and audit updates thereafter.
- Applies to loans made before, on, or after the date of enactment, including the forgiveness of the loan.
- **Gives PPP Borrowers the ability to request an increase in loan amount**
 - Requires the administrator to release guidance to lenders within 17 days of enactment that allows borrowers who returned all or part of their PPP loan to reapply for the maximum amount applicable so long that they have not received forgiveness.
 - Additionally, borrowers whose loan calculations have increased due to changes in interim final rules to work with lenders can modify their loan value regardless of whether the loan has been fully disbursed, or if Form 1502 has already been submitted.
- **Allows the PPP borrower to elect a covered period ending at the point of the borrower's choosing between 8 and 24 weeks after origination**
- **Expands PPP eligibility to small 501(c)(6) organizations**
 - The organization cannot receive more than 15 percent of receipts from lobbying.
 - While not completely clear from the Act's language, we expect the SBA to include both federal and state lobbying when calculating the thresholds.
 - The lobbying activities cannot comprise more than 15 percent of activities.
 - The cost of lobbying activities of the organization cannot exceed \$1,000,000 during the most recent tax year that ended prior to February 15, 2020.
 - The organization has 300 or fewer employees.
 - Prohibits any eligible entity from using proceeds of the covered loan for lobbying activities, as defined by the Lobbying Disclosure Act, lobbying expenditures related to state or local campaigns, and expenditures to influence the enactment of legislation, appropriations, or regulations.
- **Clarifies the interest rate on PPP loans is non-compounding and non-adjustable for all new initial PPP loans and second draw loans.**
- **Extends the covered period for all PPP loans through March 31, 2021. This applies to loans made before, on, or after the date of enactment, including the forgiveness of such loan**

Economic Injury Disaster Loans (EIDL) and Grants:

- Provides an additional \$20 billion for EIDL grants for low-income communities.
- Repeals the CARES Act provision that requires PPP borrowers to deduct their EIDL emergency grant from their PPP loan forgiveness amount. The administrator of the SBA shall issue rules that ensure borrowers are made whole if they received forgiveness and their EIDL was deducted from that amount.
- Creates a process to give existing EIDL grant recipients that received less than the full \$10,000 grant amount to reapply for the difference.
- Clarifies tax treatment of certain loan forgiveness and other business financial assistance under the coronavirus relief legislation. The provision clarifies that gross income does not include forgiveness of certain loans, like emergency EIDL grants.
- The provision also clarifies that deductions are allowed for otherwise deductible expenses paid with the amounts not included in income by this section, and that tax basis and other attributes will not be reduced because of those amounts being excluded from gross income. The provision is effective for tax years ending after date of enactment of the CARES Act.
- The provision provides similar tax treatment for targeted EIDL advances and grants for shuttered venue operators, effective for tax years ending after the date of enactment of the provision.
- The covered period for emergency EIDL grants runs through December 31, 2021.
- Allows more flexibility for the SBA to verify that emergency EIDL grant applicants have submitted accurate information.
- Extends time for SBA to approve and disburse emergency EIDL grants from three to 21 days.

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Other Small Business Administration (SBA) Programs and Loan

- **Section 1112 of the CARES Act debt relief program:**
 - Extends the CARES Act debt relief program by providing an additional \$3.5 billion for Section 1112 of the CARES Act.
 - Resumes the payment of principal and interest (P&I) on small business loans guaranteed by the SBA under the 7(a), 504 and micro loan programs, established under the CARES Act.
 - All borrowers with qualifying loans approved by the SBA prior to the CARES Act will receive an additional three months of P&I, starting in February 2021. Going forward, those payments will be capped at \$9,000 per borrower per month.
 - After the three-month period described above, borrowers considered to be underserved—namely the smallest or hardest-hit by the pandemic—will receive an additional five months of P&I payments, also capped at \$9,000 per borrower per month. They include:
 - Borrowers with SBA microloans or 7(a) Community Advantage loans.
 - Borrowers with any 7(a) or 504 loan in the hardest-hit sectors, as measured by the severity of sector-wide job losses since the start of the pandemic.
 - They include food service and accommodation; arts, entertainment and recreation; education; and laundry and personal care services.
 - SBA payments of P&I on the first 6 months of newly approved loans will resume for all loans approved between February 1 and September 30, 2021, also capped at \$9,000 per month.
 - If the SBA projects that appropriations provided for the debt relief program are insufficient to fund the extensions provided, the Administrator may proportionally reduce the number of months provided in each extension.
 - Clarifies eligibility and increases program integrity:
 - SBA payments should be made on any loan approved before the applicable deadline, and debt relief payments should be made only once the loan is fully disbursed.
 - SBA may establish a minimum loan maturity period for each loan product covered under this section to prevent program abuse.
 - Any business or applicant may only receive P&I payments for only one loan approved after CARES Act enactment.
 - Requires that SBA place program information on its website, conduct outreach to all borrowers, report monthly to Congress on program spending, and educate lenders, borrowers, SBA district offices, and resources partners about the program.
- **Modifications to 7(a) Loan Programs**
 - Increases to 90 percent the loan guarantee amounts on 7(a) loans, including for Community Advantage loans, until October 1, 2021.
 - Increases the Express Loan amount from \$350,000 to \$1 million on January 1, 2021, and then reverts permanently to a lower amount of \$500,000 on October 1, 2021.
 - The Express Loan guaranty amount for loans of \$350,000 and less is temporarily increased from 50 to 75 percent, and for loans above \$350,000 the guarantee remains at 50 percent. On October 1, 2021, the guarantee reverts to 50 percent for all Express Loans.
- **Flexibility in Deferral of Payments of 7(a) Loans**
 - Creates parity between bank-held and secondary market-owned 7(a) loans to seek up to a one-year deferral.
 - Requires SBA to buy back loans if investors refuse to provide the extend deferral unless the SBA determines the extended deferral would cause a positive subsidy for the Secondary Market Guarantee Program.

Other:

- **Employee Retention Tax Credit (ERTC)**

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- PPP loan recipients will now be eligible for the ERTC in the time period from March 12, 2020, through December 31, 2020, for wages that were not paid using forgiven PPP loan proceeds.
- Previously, taking a PPP loan precluded ERTC eligibility. Businesses can now qualify for the ERTC if you took a PPP loan, you cannot claim the credit for any of the funding from a forgiven PPP loan that was used to cover payroll. For example, if a business received a \$100k PPP loan to cover payroll which has been forgiven, you cannot “double-dip” and also claim a credit on that \$100k.
- For ERTC in 2020, businesses (with less than 100 employees) in the time period from can claim a tax credit of 50 percent of wages paid after March 12 for most employees. This credit only qualifies for up \$10,000 per employee, or \$5,000 once the 50 percent limit is met.
- Businesses qualify for this credit in 2020 if they:
 - Had their business fully or partially suspended during at least one quarter in 2020 (a business will only get a credit on wages paid during the part of the quarter the business was shut down), or
 - Had a precipitous drop in gross receipts for quarters in 2020 relative to the same quarters in 2019. The gross receipts of the employer must be less than 50% of what they were for the same quarter in 2019.
 - If you have more than 100 employees there are different stipulations for you to qualify.
- The legislation also extended the date that an employer may apply for ERTC from Jan 1, 2021 through June 30, 2021 but qualifications in that time period are different than the qualifications for the credit in 2020. These new rules are generally more favorable to employers.
- Under the 2021 rules:
 - The tax credit rate increases from 50 to 70 percent of qualified wages, employers can now receive a credit of \$7,000 on a \$10,000 wage.
 - The \$10,000 per employee limit is now quarterly, instead of yearly. Employers in the first two quarters can now receive a maximum credit of \$14,000 per employee in 2021 (\$7,000 each in Q1 and Q2)
 - Eligibility for the credit is eased, and year-over-year gross receipts must now have a 20 percent decline instead of a 50 percent decline in the 2020 version of the credit.
 - The level for determining “large employer” is increased to 500 employees from 100, thereby making access to the easier “small employer” rules available for many more businesses.
- **Return to work reporting for CARES Act Agreements**
 - Effective 30 days after enactment, requires states to have methods in place to address situations when claimants of unemployment compensation refuse to return to work or refuse to accept an offer of suitable work without good cause including:
 - A reporting method for employers to notify the state when an individual refuses employment.
 - A plain language notice to claimants about state return to work laws, rights to refuse to return to work or to refuse suitable work and information on contesting a denial of a claim, as well as what constitutes suitable work, including a claimant’s right to refuse work that poses a risk to the claimant’s health and safety.
- **Extension of credits for paid sick and family leave**
 - Extends the refundable payroll tax credits for paid sick and family leave, enacted in the Families First Coronavirus Response Act (FFCRA), through the end of March 2021.
 - Modifies the tax credits so that they apply as if the corresponding employer mandates were extended through the end of March 2021. This provision is effective as if included in FFCRA.
- **Funds for shuttered venue operators**
 - Authorizes \$15 billion for the SBA to make grants to eligible live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, or talent representatives who demonstrate a 25 percent reduction in revenues.
 - Prohibits eligible entities that receive a grant under the Shuttered Venue Operator Grants from obtaining a PPP loan.

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- **Direct Payments for individuals:** The bill will also impact individuals by providing \$600 in one-time stimulus checks to adults and children within a certain income threshold, and an additional \$300/week in unemployment payments through March 14, 2021.

The Brewers Association believes that the provisions summarized above may impact our members. To evaluate whether any of the relief applies to your business, the Brewers Association recommends that you consult with your accounting, legal, tax, or other advisors. You can view a larger breakdown of the COVID-19 legislation [here](#) and the full text of the bill [here](#).