

PAYCHECK PROTECTION PROGRAM FREQUENTLY ASKED QUESTIONS

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We have been sharing [client alerts](#) about the Small Business Administration (“SBA”) Paycheck Protection Program (“PPP”) created by the CARES Act. Below are some frequently asked questions and answers with respect to the PPP that we hope will help you understand this program.

What is the Paycheck Protection Program?

The PPP is a loan program that allows eligible borrowers to obtain loans on very favorable terms to cover payroll and other eligible expenses (rent, utilities, certain health care benefits and health insurance premiums, and certain interest expense). This loan program is for the specific purpose of helping eligible borrowers affected by the coronavirus pandemic to keep paying employees and to keep their doors open for business. To the extent the PPP loan is promptly used to pay payroll, rent, mortgage interest and utilities, *the loan never has to be repaid* (“terms and conditions apply,” naturally).

Who is eligible for a PPP loan?

You are eligible for a PPP loan if you employ fewer than 500 employees (full-time and part-time) who live in the United States, AND you were in operation on February 15, 2020, AND you either (1) paid salaries and payroll taxes for employees or (2) paid independent contractors.

Some businesses may qualify under other applicable tests. Please check with your lender or advisor about eligibility on other grounds.

Be aware that two or more businesses under common control could be “affiliated” under SBA rules. “Affiliated” employers are lumped together in determining the 500-employee limit. This determination often requires detailed analysis. Check with your attorney even though you may think your organization stands 100% alone.

Do independent contractors count as employees for purposes of PPP calculations?

No. Independent contractors can apply for a PPP loan on their own; the entities that engage them cannot count them for purposes of a PPP loan application.

I don't have employees. Can I still qualify?

Yes. The [rules](#) issued under the CARES Act state: “You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual . . .” In that case, you must submit documents such as payroll processor records, payroll tax filings, Forms 1099-MISC, income and expenses from a sole proprietorship, or other documents sufficient to demonstrate the qualifying loan amount.

How do I apply for a PPP loan?

You should contact your existing lender or lending institution where you maintain your bank accounts. Many participating lenders are accepting applications only from existing customers. Most lenders are accepting applications through their own online portals. If you need help finding a qualified lender, this [SBA search tool](#) will identify lenders near you.

When can I apply?

Applications will be accepted now through June 30, 2020, or until the funds for this program (currently \$349 billion, but we expect more to be appropriated) are exhausted. This program is on a “first come, first served” basis. APPLY AS SOON AS YOU CAN.

What is the maximum amount I can borrow?

It's a formula amount: 2.5 times your average monthly payroll expenses for either (1) the 12 months before you apply for the loan or (2) calendar year 2019 (the bank to which you apply may require you to use (2), which many applicants who use payroll services will find more convenient anyway).

If you are a seasonal business, you can borrow 2.5 times average monthly payroll costs from either February 15 to June 30, 2019, or March 1 to June 30, 2019, whichever generates the better result.

If you are a startup business that did not exist between February 15 and June 30, 2019, you can calculate your average monthly payroll costs based on payroll from January 1 to February 29, 2020.

Salary and wages above \$100,000 per employee are excluded from the calculation of average monthly payroll, but all benefits the business pays on behalf of such employees (e.g., health insurance, retirement benefits) are counted in the payroll calculation. If you already have an Economic Injury Disaster Loan, please inform your lender or lawyer.

Finally, there's an absolute cap of \$10 million on every PPP loan, and each borrower can get only one such loan.

What information should I gather in order to apply for a PPP loan?

You should have evidence of paying payroll or self-employment taxes. Any or all of the following information may be required by your lender for the relevant period; check before applying:

- 2019 IRS quarterly 940, 941, or 944 payroll tax reports;
- Documentation for the following:
 - Gross wages for each employee
 - Paid time off for each employee
 - Vacation pay for each employee
 - Family medical leave pay for each employee

- State and local taxes assessed on the employee's compensation for each employee
- Documentation showing the total health insurance premiums the company paid under a group health plan for all employees and owners
- Documentation of the sum of all retirement plan funds the company paid (note: do not include money that came from employees' paycheck contributions); this includes 401K plans, simple IRAs, and SEP IRAs;
- Organizational documents for your business;
- Sole proprietors, independent contractors, and the self-employed must submit documents such as payroll processor records, payroll tax filings, Form 1099-MISC, or income and expenses from a sole proprietorship;
- Borrowers who do not have any of this documentation should provide supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount;

What can I use the loan proceeds for?

The loan proceeds can be used for:

- payroll costs;
- costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- payments of interest on any mortgage obligation (but not to pay principal or prepay a mortgage);
- rent (including rent under a lease agreement);
- utilities;
- interest on any other debt obligations that were incurred before the covered period; and
- refinancing an SBA Economic Injury Disaster Loan (EIDL) made between January 31, 2020, and April 3, 2020.

When will I have to repay the loan?

No payments will be due in the first 6 months after you receive the loan, but interest will accrue during this time. Any amount that is not forgiven will then have to be paid back to the lender over a 2-year period. You can prepay the loan at any time without penalty.

Are there any other PPP loan terms I should know about?

- Interest rate will be 1%.
- No collateral will be required.
- No personal guarantees will be required.

Will all or a portion of my PPP loan be forgiven?

The four categories of expenses outlined below which are **incurred and paid** during the eight-week period immediately following the date you receive the loan (the "covered period") will be eligible for **forgiveness** under the PPP:

- payroll costs (which includes, among other things, W-2 and 1099 income);
- interest (but not principal) on any mortgage existing before February 15, 2020;
- rent (including rent under a lease agreement) existing before February 15, 2020; and
- utility payments for service in effect before February 15, 2020.

Note that PPP loan proceeds can be used for a few other purposes that do not qualify for forgiveness (for example, interest on debt, other than a mortgage, that existed before February 15, 2020).

Also, as of this writing, at least 75% of the PPP loan must be for payroll costs, although we are hearing that this requirement may be reduced or eliminated.

The covered period may run past June 30, 2020, so long as you apply for the PPP loan before that date.

Exceptions: Forgiveness is **reduced** based on headcount reductions and salary reductions. Both are hard to work through and may require the assistance of legal counsel.

Is loan forgiveness automatic?

No. The borrower will need to submit a certification to the lender that includes:

- Documentation verifying the number of employees on payroll and pay rates during the 8-week period after you get the loan proceeds;
- State income, payroll, and unemployment insurance filings; and
- Cancelled checks, payment receipts, account transcripts, or other documents verifying payments on covered mortgage, lease, and utility payments

Lenders will have to respond to a forgiveness application within 60 days of submission.

Is the amount forgiven taxable?

No. The amount of any loan forgiveness will not be considered gross income under the Internal Revenue Code, although state and local tax authorities may or may not tax the forgiven amount.

What happens if PPP loan funds are misused?

If you use PPP funds for unauthorized purposes, the SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

Can I apply for more than one PPP loan?

No.