Small Business Paycheck Protection Program (PPP): Frequently Asked Questions

These FAQs are based on an analysis of the language in the statute and subsequent guidance from the Small Business Administration (SBA). As the SBA rolls out this new program, the agency will likely issue further guidance, which may change the way that we believe, at this time, the program will work based on only the language of the law without much further context. Therefore, the forthcoming guidance or regulations from the SBA should be relied upon and any examples herein should be reviewed with caution. It is critical to consult with your accountant on your specific financial situation and how the PPP might impact it.

Note that the PPP contemplates two steps: obtaining a loan and obtaining forgiveness of said loan. Accordingly, this FAQ document is divided into two sections: “PPP Loans” and “Loan Forgiveness.”

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APPLICATION AND LOAN TERMS/MECHANICS

How do I apply?
You can apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. You should consult with your local lender as to whether it is participating. All loans will have the same terms regardless of lender or borrower. A list of participating lenders as well as additional information and full terms can be found at www.sba.gov.

What do I need to fill out to apply and where?
You will need to complete the Paycheck Protection Program loan application and submit the application with the required documentation to an approved lender that is available to process your application by June 30, 2020. This will include a good faith certification that the uncertainty of current economic conditions makes the loan necessary to support ongoing operations. You must further certify that funds will be used to maintain payroll and pay mortgage interest, lease, and utility payments. Finally, you must certify that you do not have any duplicative applications.

What documents will I need to gather to submit with the PPP application?
Talk to your lender about specific loan documentation. Here is a list of items you may be asked to provide:

- Company Information
  - Proof of existence of the company, including articles of incorporation, operating agreements, and proof of existence from the applicable state’s Secretary of State
  - Existing notes and debts of the company
- Payroll
  - Payroll reports from 2/15/20 to 6/30/20, as well as the amount paid from 4/1/19 to the date of the loan
  - Form 941’s for 6/30/19, 9/30/19, 12/31/19, and 3/31/20
  - Payments made to independent contractors from 2/15/20 to 6/30/20, including names, SSN/EIN, and gross pay, as well as the amount paid from 4/1/19 to the date of the loan
- Benefits
  - Health care benefits paid by the company from 2/15/20 to 6/30/20, as well as the amount paid from 4/1/19 to the date of the loan
  - Unemployment Tax Returns for 6/30/19, 9/30/19, 12/31/19, and 3/31/20, showing each individual’s compensation
  - Retirement plan summary including plan audits and Form 5500 from the most recent tax year
- Rent & Utilities
  - Current lease agreements
  - Recent utility bills from 2/15/20 through 6/30/20

What is my interest rate?
The interest rate will be 0.5-1.0%.

When will I owe back any un-forgiven balance on the loan?
In two years. There are no prepayment penalties or fees, should you be able and willing to pay it back before then.

When do I need to start paying interest on my loan?
All payments are deferred for 6 months; however, interest will continue to accrue over this period.

**What collateral will I need for the PPP loan?**
None. No collateral is required.

**Do I need to personally guarantee this loan?**
No. There is no personal guarantee requirement. Of course, if an applicant fraudulently misrepresents themselves or their business or if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges.

**When can I apply?**
According to recent SBA guidance, starting April 3, 2020, small businesses and sole proprietorships can apply. Starting April 10, 2020, independent contractors and self-employed individuals can apply. The SBA encourages eligible entities to apply as quickly as possible due to the funding cap.

**How long do I have to decide whether to apply for a loan?**
The loans are unavailable after June 30, 2020. However, Congress provided the Small Business Administration (SBA) with $349B to administer and fund this program, which means the funds will run out. This spend-down may happen long before June 30, given the severity of the economic crisis. Thus, the SBA encourages eligible entities to apply quickly.

**Will I need to put up collateral? And how much does the loan cost to process?**
Fees are waived and the usual SBA requirement that a small business cannot get credit elsewhere does not apply. The usual personal guarantee requirement is waived, and no collateral will be required.

**ELIGIBILITY**
**Who qualifies?**
The intent is to qualify a broad range of employers. If you are a for-profit business with under 500 employees, you qualify.

If you have over 500 employees, it gets trickier. Employers in the “Accommodation and Food Services” industry can have more than 500 employees, provided they do not have more than 500 employees per location. Additionally, businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries (click HERE for additional detail).

Subject to certain documentation requirements, individuals who are self-employed, independent contractors, or sole proprietors are eligible as well.

As for nonprofits, the law states only 501(c)(3) nonprofits are eligible, but the SBA/IRS guidance does not explicitly mention this limitation.

**But what about the amount of revenue my business generates? If I generate over a certain annual amount, doesn’t that disqualify me from working with the SBA?**
While this may remain a limiting requirement for other SBA loan products, for purposes of the PPP, your revenue amount is irrelevant. In describing the 500-employee limit, the law states that these employers are eligible “in addition to small business concerns[.]” (Emphasis added.)

**How is an “employee” defined for purposes of the PPP?**
The new legislative text defines “employee” as “individuals employed on a full-time, part-time, or other basis.”

According to the SBA, the determination of the number of employees is the “average number of people employed for each pay period over the business’s latest 12 calendar months. Any person on the payroll must be included as one employee regardless of hours worked or temporary status. The number of employees of a concern in business less than 12 months is the average for each pay period that it has been in business.” The SBA calculates number of employees in accordance with 13 CFR 121.106. For more information on that definition, and others, visit 48 CFR 19.

**What about independent contractors? Are they “employees”?**

With respect to independent contractors, the SBA website provides the following:

*How do I determine if I should include or exclude an independent contractor (i.e., a 1099 employee) from the employee pool?*

Generally an independent contractor is not considered to be an employee. However, SBA will treat an independent contractor as an employee where there is evidence of an employee/employer relationship. SBA considers the totality of the circumstances in determining whether individuals are employees of a concern. This includes, but is not limited to, the criteria in SBA’s Size Policy Statement No. 1 and the direction IRS provides for Federal income tax purposes, such as the Employer’s Supplemental Tax Guide - Publication 15-A and the information in the IRS website.

**Should I count employees at any affiliated entities?**

According to the SBA, you must include the employees or receipts of all affiliates when determining the size of a business. Affiliation with another business is based on the power to control, whether exercised or not. The power to control exists when an external party has 50 percent or more ownership. It may also exist with considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Check the SBA’s compliance guide for size and affiliation for more detailed information. The SBA determines affiliation in accordance with 13 CFR 121.103.

For this program, the SBA’s affiliation standards are waived for small businesses (1) in the hotel and food services industries (click HERE for NAICS code 72 to confirm); (2) that are franchises in the SBA’s Franchise Directory (click HERE to check); or (3) that receive financial assistance from small business investment companies licensed by the SBA. According to the SBA/IRS, additional guidance may be released as appropriate.

**LOAN AMOUNT**

**What’s the loan amount?**

The amount would be the lesser of: (1) 2.5 times your average monthly payroll or (2) $10 million. For example, assuming no previous SBA loans for the same period or for the same purposes, if a business has a $300K monthly payroll, the loan amount would be $750K. If your average monthly payroll is over $400K, you will bump into the $10 million cap.

**ALLOWED USES OF LOAN PROCEEDS**

**What can I use the loan proceeds for?**

During the covered period, the recipient may use the loan for:

- Payroll costs (see below)
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
• Interest on any mortgage obligation (but not any principal payment) on obligations, incurred before February 15, 2020
• Rent, under lease agreements in force before February 15, 2020
• Utilities, for which service began before February 15, 2020

What can’t I use the loan proceeds for?
With regard to what the loan can be used for, the law specifically allows certain business costs and specifically disallows others. However, there is a vast world of business expenses that are not listed one way or another. At this time, until or unless the SBA states differently, it would be prudent to only use loan proceeds for the “allowed uses” specifically stated in the law.

That said, the law specifically disallows:
• Compensation of an individual above $100,000 annually (pro-rated for the covered period),
• Taxes imposed or withheld under IRC Chapters 21, 22, or 24,
• Any compensation of an employee with a principal place of residence outside the U.S., and
• Any sick or family leave for which a credit is allowed under the Families First Coronavirus Response Act.

How are “payroll costs” defined for purposes of the PPP?
“Payroll costs” are broadly defined, as including:
• A salary, wage, commission, tips, or similar compensation (capped at $100,000 on an annualized basis for each employee),
• Employment costs, such as
  o Costs for vacation; parental, family, medical or sick leave payment,
  o Dismissal or separation allowance,
  o Payments for an employer’s group health benefits (including premiums), and
  o Payment for retirement benefits, and
• Payment of State or local tax assessments on employee compensation.

For a sole proprietor or independent contractor: payment that is a wage, commission, income, net earnings from self-employment, or similar compensation, with a cap of $100,000 in one year (pro-rated for the covered period).

Tell me more about the $100,000 salary limitation – how would this work?
This is not an all-or-nothing situation. It does not mean that the loan cannot be requested for anything related to employees making over $100K. Rather, for employees making over $100K, you are only allowed to request loan proceeds on the first $100K of their salary, pro-rated for the covered period.

What happens if I don’t apply for forgiveness or if my forgiveness request is denied? This may happen if I need to lay off people after all, or if I already had to lay off people before the bill passed and cannot hire them back. (See below for more info on the lay-off and re-hire requirements to obtain forgiveness.)
Recent SBA guidance indicates that the interest will be 0.5%-1.0%, with a maturity in 2 years. Prepayment penalties are prohibited.

When will I owe the first payment on un-forgiven loan amounts?
Lenders are required to provide complete payment deferment relief for “impacted borrowers” for six months. This includes interest. Impacted borrowers are presumed to have been impacted adversely by COVID-19, and all recipients are presumed to be “impacted borrowers.”
Can I use the loan to pay for supplies, such as Part B medicines?
Be careful here. With regard to what the loan can be requested for, the law specifically allows certain business costs and specifically disallows others. However, there is a vast range of business expenses that are not listed one way or another, and supplies is one of them. At this time, until or unless the SBA states differently, it would be prudent to only use loan proceeds for the “allowed uses” specifically stated in the law. This means you should avoid using loan proceeds for supplies at this time, even if you don’t apply for forgiveness, because supplies are not listed in the law as an “allowed use.” It could be possible that the SBA expands “allowed uses” via guidance or regulation.

Can I use the loan to make payments on leased or mortgaged medical equipment?
This is tricky. The law lists “rent (including rent under a lease agreement)” as an allowed use, but it seems like the intent was to limit this to rent on real property. This may be clarified further by the SBA.

With regard to mortgages, the law limits the allowed use to “payments of interest” and specifically disallows prepayment of or payment of principal. Thus, in no event can the loan proceed be used for anything other than interest payments. With regard to whether this applies only to real property, in the part of the law that discusses loan forgiveness, the law specifically states that a mortgage in this context would include a mortgage “on real or personal property.”

Thus, at this time, the best answer seems to be: You should not use the loan proceeds to pay for rented or leased equipment, but you could use it to pay for interest on mortgaged equipment. Again, this is an interpretation of statutory language and may be subject to change by the SBA in further guidance as they roll out the loans.

Also, keep in mind, the SBA guidance notes that, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

THE PPP AND OTHER SBA RELIEF
How many loans can I take out under the PPP?
One.

The SBA offers more loans than just the PPP loans. How does the PPP interact with other SBA products that might help me at this time?
You may opt to take out other loans through the SBA, including the EIDL and 7(a) programs. However, the loans must be for mutually exclusive purposes. For instance, both the EIDL and PPP may be to assist with salaries, but you cannot “double-dip.” So, as an example, you might use the EIDL to cover the salary “gap” for employees who make over $100,000. Further, if you receive the emergency EIDL grant award of up to $10,000, then that amount would be subtracted from the PPP loan forgiveness total.

Loan Forgiveness
I saw that I can only be forgiven for certain expenses within an eight-week time period. When does the clock start running on that eight weeks?
You can be forgiven for an eight-week period (assuming you’re spending the money on allowed uses), starting on the date that the loan originates. Note that recent SBA guidance has noted that at least 75% of the forgiven amount must have been used for payroll.

Will I know at the time I take out the loan that I can have the entire amount forgiven? How can I have certainty on that?
You won’t know at the time you take the loan exactly what portion will be forgiven, and this is understandably concerning to business owners at a time of steeply declining revenues. While the law specifies that an eligible recipient “shall be eligible” for forgiveness, you would have to apply to your lender/bank for forgiveness with certain documentation specified in the law. The law says that the lender “shall issue a decision” within 60 days on the amount of forgiveness after receiving your request. The fact that the lender must “issue a decision” implies that the decision could be no. However, the incentive is to approve these requests, since, if approved, the lender is automatically paid by the U.S. government for the forgiven portion. However, this “middleman” process is creating some understandable nervousness among business owners.

Where do I apply for loan forgiveness? And what are the mechanics?
You would submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.

Given that different lenders may have different requirements, talk to your lender about what other documentation may be necessary, preferably at the time of your initial loan application.

Amounts forgiven shall be considered “canceled indebtedness.” Within 90 days after the date on which the amount of forgiveness is determined by the lender, the SBA shall remit to the lender the amount of forgiveness, with any interest accrued through the date of payment. Meaning: the forgiven amount essentially “disappears” from your PPP loan.

What documentation will I need for my forgiveness application?
To obtain loan forgiveness, the recipient must submit an application to the lender. The bill specifically prohibits forgiveness without this documentation. The lender must make a decision with 60 days, and the application is to include:

• Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in subsection (d), including payroll tax filings reported to the IRS and state income, payroll, and unemployment insurance filings.
• Documentation, including canceled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments.
• A certification that the documentation presented is true and correct and that the amount for which forgiveness is requested was used for allowable uses, and
• Any other documentation the Administrator determines necessary.

Given that different lenders may have different requirements, talk to your lender about what other documentation may be necessary, preferably at the time of your initial loan application.

Can I take the loan and use it only to pay my lease and utilities?
You can use the loan proceeds for these purposes only, since they are “allowed uses” in the law, but in that case the loan won’t be forgiven. The forgiveness is tied to keeping your payroll, as described in more detail elsewhere in this document.

What exactly are the requirements for forgiveness in terms of retaining staff and salary levels?
Recent SBA guidance has noted that at least 75% of the forgiven amount must have been used for payroll.
The amount of forgiveness is reduced based on a formula for business owners who have laid off employees or reduced wages, as described in detail below. There is an opportunity for business owners to re-hire people or re-instate wages by June 30 and still obtain the forgiveness, as described below.

What’s the formula for forgiveness reduction due to lay-offs or wage reductions?
This is not all-or-nothing: If you’ve been forced to lay off some of your staff, this does not disqualify you completely from forgiveness (subject to the 75% payroll requirement above). It does, however, mean that the amount of loan forgiveness will be reduced commensurately.

The amount of forgiveness is reduced based on a formula for business owners who have laid off employees or reduced wages, as follows:

- **Lay-offs:** The forgiveness amount is offset by the percentage reduction in total number of FTEs. It seems that the intent of the legislation is that, if an employer has 100 employees and lays off 25, their forgiveness should be offset by an equivalent percentage. However, the legislative language is unclear here.
  - Calculation of % reduction in FTEs:
    - Average number of Full-Time Equivalent Employees (FTEs) per month for the 8-weeks beginning on loan origination divided by the average number of FTEs per month, per one of three options below:
      - Option 1: Average number of FTEs per month from February 15, 2019 to June 30, 2019
      - Option 2: Average number of FTEs per month from January 1, 2020 to February 29, 2020
      - Seasonal workers: Average number of FTEs per month from February 15, 2019 to June 30, 2019
    - Example: A firm reduces the total amount of FTEs by 25%. As such, the total amount of the loan forgiveness is reduced by 25%.

- **Wage reductions:** The forgiveness amount is offset for each salary reduction of more than 25% (for employees making under $100K annually). The total salary reduction amount would be subtracted from the forgiveness amount.
  - Calculation of wage reduction: Subtract from the payroll costs the amount of any reduction in wages that is greater than 25% compared to their most recent full quarter for each employee who did not earn during any pay period in 2019 wages at an annualized rate more than $100,000.
  - Example: A firm reduces the salary of a salaried employee who makes $90,000 per year to $60,000 per year, which is more than 25% of the annualized salary (i.e., more than $67,500). Therefore, the loan forgiveness should be reduced by $7,500, prorated for the covered period.

Could I use the loan to re-hire people?
The congressional staff who wrote the law understood that many employers had already let go of staff before the law was enacted, due to the overnight economic blow of COVID-19. Thus, they included an opportunity to restore your ability to get loan forgiveness for rehires or increasing the salary of an employee. You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020. Note that you do not have to hire back the exact same individuals. You just have to get to the same number of employees. With respect to the wage reduction, it is currently unclear how the SBA will address that, if a different employee is hired.

How does the PPP interact with the payroll tax relief provisions created in the same law and in the Families First Coronavirus Response Act (FFCRA)?
The CARES Act and FFCRA include several tax relief provisions in addition to the small business loan relief described above. Each of these provisions interacts with the PPP and you should consult with your tax advisor before pursuing any of these options.

The main three tax provisions related to employers are:

- Payroll tax deferral, created by section 2302 of CARES Act
- Employee Retention Credit, created by section 2301 of CARES
- Family and Medical Leave Act (FMLA) credit, created in 2017, expanded by FFCRA to cover 100% of eligible COVID-related paid leave

At this time, it is our understanding that the interactions work as follows:

- Payroll tax deferral: per the statute, the deferral of payroll tax payments is disallowed if a loan is forgiven under the PPP, but not necessarily disallowed if a loan is obtained under the PPP. However, it is possible that we will see future guidance disallowing this deferral for any employer who used the PPP loan, whether forgiven or not.
- Employee Retention Credit: the credit is disallowed if a loan is received under the PPP, whether forgiven or not.
- FMLA credit: the latest IRS guidance states that an entity can receive a PPP loan and may have the loan forgiven without jeopardizing the FMLA credit. However, the amounts taken as a credit will reduce the amount eligible to be forgiven under the PPP. Future guidance may be developed to address the interactions between the FMLA credit and loans received under the PPP.

**Additional Resources**

- [Small Business Administration PPP information](#)
- [SBA PPP Sample Loan Form](#)
- [IRS PPP Overview](#)
- [IRS PPP Borrower Information](#)
- [IRS PPP Lender Information](#)
- U.S. Senate Committee on Small Business & Entrepreneurship FAQ on PPP (majority)
- U.S. Senate Committee on Small Business & Entrepreneurship FAQ on PPP (minority)
- U.S. Chamber of Commerce information on the PPP
- NFIB: [comparison of EIDL and PPP](#)