



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

These FAQs are based on an analysis of the language in the CARES Act, subsequent legislation, and guidance from the Small Business Administration (SBA). As the SBA continues to administer 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. Therefore, 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: Current law dictates that the Paycheck Protection Program (PPP) close at the end of August 8, 2020. As such, SBA is no longer accepting PPP applications from participating lenders. This document continues to summarize key information, in case it is of assistance.

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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PPP Loans: Basics

How do I apply?

Current law dictates that the PPP close at the end of August 8, 2020. As such, SBA is no longer accepting new PPP applications from participating lenders.

What is my interest rate?

The interest rate will be 1%.

When will I owe back any un-forgiven balance on the loan?

In two years, if you obtained a loan before June 5. In five years, if you obtained a loan after June 5. 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?

Current law dictates that the PPP close at the end of August 8, 2020. As such, SBA is no longer accepting new PPP applications from participating lenders.

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.

How is an “employee” defined for purposes of the PPP?

There are two definitions of “employee” at play in the PPP: one for purposes of determining loan eligibility and another for purposes of determining loan forgiveness. The [Treasury FAQ](#) provides as follows:

- For purposes of loan eligibility, the CARES Act defines the term employee to include “individuals employed on a full-time, part-time, or other basis.” In other words, to determine whether an entity is under the 500-employee threshold, it must calculate the total number of employees, including part-time employees.
- For purposes of loan forgiveness, the CARES Act uses the term “full-time equivalent employees” to determine whether and how much the loan forgiveness amount will be reduced in the event of layoffs. In its [IFR on forgiveness](#), the SBA defines a “full-time equivalent employee” as an employee who works 40 hours or more, on average, each week. See below for additional detail on the loan forgiveness process.

What about independent contractors? Are they “employees”?

With respect to independent contractors, the SBA interim final rule states the following:

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

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan calculation.

On April 14, the SBA issued an [interim final rule](#) (IFR) related to independent contractors applying for the PPP loan. The rule clarifies how to make certain calculations under the PPP loan, among other items.

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 \$300,000 monthly payroll, the loan amount would be \$750,000.

Note: If you have an Economic Injury Disaster Loan (EIDL) from between January 31, 2020 and April 3, 2020, then special rules apply. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan.

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
- Refinancing of certain EIDL loans

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
 - Costs for vacation; parental, family, medical or sick leave payment,

- Dismissal or separation allowance,
- Payments for an employer's group health benefits (including premiums), and
- 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 in the United States making over \$100,000. Rather, for employees in the United States making over \$100,000, you are only allowed to request loan proceeds on the first \$100,000 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.

Any un-forgiven loan balance will roll over into a loan, and [SBA](#) guidance indicates that the interest will be 1%, with a maturity in 2 years for loans obtained before June 5. For loans obtained after that date, the interest will be 1% with a five-year maturation. 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. 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?

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 Congress expands "allowed uses" via future legislation.

Can I use the loan to make payments on leased or mortgaged medical equipment?

Yes: the [forgiveness application](#) clarified that borrowers may use the loan for mortgage interest payments for "any business mortgage obligation on real or personal property" and for "business rent or lease payments for real or personal property."

Do keep in mind that not more than 40% of the loan amount may be for non-payroll costs.

Will there be auditing of the loans in the future?

Given the amount of funds being released, it is highly likely that there will be oversight of the loan program in some form. On [April 28](#), Treasury Secretary Mnuchin and Small Business Administrator Carranza issued a joint press release, noting the following: "To further ensure PPP loans are limited to eligible borrowers, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application. Regulatory guidance implementing this procedure will be forthcoming."

With regard to loans under \$2 million, Treasury has provided: “Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.” (See question 46 in [the FAQ.](#))

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. If you have an Economic Injury Disaster Loan from between January 31, 2020 and April 3, 2020, then special rules apply. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

Loan Forgiveness

I saw that I can only be forgiven for certain expenses within a certain time period. When does the clock start running on that time period?

A borrower can be forgiven for a 24-week period (assuming it spends the loan proceeds on allowed uses) that begins on the date of loan origination, but under no circumstances can that period extend past December 31, 2020. Some borrowers may elect for an 8-week period.

Note that at least 60% of loan proceeds must be spent on payroll. Failure to meet this threshold may disqualify the entire loan from forgiveness, unless SBA or Congress clarify this through future action.

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. Whatever balance is not forgiven will roll over into a loan, as described above.

Where do I apply for loan forgiveness? And what are the mechanics?

To receive loan forgiveness, a borrower must submit a [Loan Forgiveness Application](#) to its lender. The following borrowers may be able to use a simplified application called the [EZ Loan Forgiveness Application](#): a borrower who is self-employed and has no employees; or a borrower who did not reduce the salaries or wages of their employees by more than 25%, and did not reduce the number or hours of their employees; or a borrower who experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of their employees by more than 25%.

The lender has 60 days from receipt of a complete application to review it and issue a decision to SBA. If the lender determines that the borrower should receive forgiveness of some or all of the amount applied for, it will request payment from SBA at the same time it issues its decision to SBA. Within 90 days of the lender issuing its decision to SBA, the SBA will remit the forgiveness amount to the lender plus any interest accrued through the date of payment. Amounts forgiven shall be considered “canceled indebtedness.” Meaning, the forgiven amount

essentially “disappears” from your PPP loan. The lender is responsible for notifying the borrower of the forgiveness amount and, as noted above, any un-forgiven balance must be repaid by the borrower within two years.

Note that, if the borrower received an EIDL Advance, SBA will deduct this amount from the forgiveness amount remitted to the lender.

In its [IFR on forgiveness](#), SBA clarifies that this general process “applies only to loan forgiveness applications that are not reviewed by SBA prior to the lender’s decision on the forgiveness application. In a separate interim final rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, SBA will describe its procedures for reviewing PPP loan applications and loan forgiveness applications.” Note that SBA/Treasury have announced they will audit any loans over \$2 million upon receipt of a forgiveness request, and they may audit additional loans, including loans with lower amounts, as they see fit within their broad discretion to administer the PPP.

For additional information, please consult the standard application for loan forgiveness, which may be accessed [here](#). Treasury and SBA have provided additional detail on the forgiveness process [here](#) as well.

What documentation will I need for my forgiveness application?

The loan forgiveness application form specifies which documents will be needed: see page 10 of the application [form](#) to determine what documentation you must submit to your lender with your forgiveness application, what documentation you must maintain and make available upon request, and what documentation you may voluntarily submit with your application. A borrower cannot receive forgiveness without submission of the required documentation.

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. Congress may change this requirement with subsequent legislation.

What exactly are the requirements for forgiveness in terms of retaining staff and salary levels?

At least 60% of the loan amount must have been used for payroll. Additionally, the amount of forgiveness is reduced based on a formula for business owners who have laid off employees or reduced wages over a certain amount, as detailed on the [forgiveness application form](#).

There is an opportunity for business owners to re-hire people or re-instate wages by December 31 without a commensurate reduction in the amount of forgiveness. Treasury has clarified that there will be no reduction in forgiveness for employees who are fired for cause, who voluntarily resign, or who voluntarily request a schedule reduction. The SBA has also clarified that there will be no reduction in forgiveness for employees who reject an offer of re-hiring, provided the employer follows the process outlined on page 14 of the [IFR on forgiveness](#). Additionally, to avoid a “double penalty,” SBA has clarified that the salary/wage reduction in forgiveness applies only to the portion of the decline in employee salary and wages that is *not* attributable to the FTE reduction.

Recent statutory changes noted that, in addition to the flexibility noted above, a borrower would also be able to avoid a reduction in forgiveness related to a reduction in total FTEs if the borrower is able to document an inability to return to the same level of business activity pursuant to HHS, CDC, or OSHA guidance. Given that the new statutory language addresses the reduction in FTEs and not the salary reduction, further guidance may be necessary.

Could I use the loan to re-hire people?

Yes. Borrowers have until December 31, 2020 to restore full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

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

The Employee Retention Credit is disallowed if a loan is received under the PPP, whether forgiven or not.

With regard to payroll tax deferral, recent Congressional action has ensured that the payroll taxes can be deferred.

With regard to the FMLA credit, employers can be eligible for this credit and utilize the PPP, but amounts reimbursed as credits under the Qualified Paid Sick/Family Leave are not counted as payroll costs for purposes of determining PPP loan forgiveness or maximum PPP loan eligibility.

Additional Resources

[Treasury/SBA IFR on Loan Forgiveness](#)

[Treasury's Loan Forgiveness Application](#)

[Treasury's Loan Forgiveness EZ Application](#)

[Small Business Administration PPP information](#)

[PPP Borrower Application Form](#)

[SBA Interim Final Rule \(related to initial rollout\)](#)

[SBA Interim Final Rule \(related to affiliations\)](#)

[SBA Interim Final Rule \(related to self-employed entities\)](#)

[SBA Interim Final Rule \(related to certain hospitals and private equity\)](#)

[SBA Interim Final Rule \(related to seasonal employees\)](#)

[SBA Interim Final Rule \(related to loan disbursements\)](#)

[SBA Interim Final Rule \(related to corporate groups and non-bank and non-insured depository institution lenders\)](#)

[How to Calculate Loan Amounts](#)

[IRS PPP Overview](#)

[IRS PPP Borrower Information](#)

[IRS PPP Lender Information](#)

[IRS FAQ](#) (updated regularly)

Find an [eligible lender](#)

U.S. Chamber of Commerce [information](#) on the PPP

NFIB: [comparison of EIDL and PPP](#)

[Guidance](#) on Whole Loan Sales

[SBA PPP report](#) (approvals through 4/16)

[SBA PPP report](#) (approvals through 5/1)

[SBA PPP report](#) (approvals through 5/23)