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 including the Consolidated Appropriations Act, 2021, and guidance from the Small Business Administration (SBA) and the Internal Revenue Service (IRS). As the SBA continues to administer this program, with the assistance of the IRS, the SBA and IRS 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 and IRS 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 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 March 31, 2021. 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
  o Proof of existence of the company as of February 15, 2020, including articles of incorporation, operating agreements, and proof of existence from the applicable state’s Secretary of State
  o Existing notes and debts of the company
- Payroll
  o Payroll reports
  o Forms 941
  o Payments made to independent contractors, including names, SSN/EIN, and gross pay,
- Benefits
  o Health care benefits paid by the company
  o Unemployment Tax Returns, showing each individual’s compensation
  o Retirement plan summary including plan audits and Form 5500 from the most recent tax year
- Rent & Utilities
  o Current lease agreements
  o Recent utility bills

What is my interest rate?
The interest rate will be 1%. The Consolidated Appropriations Act, 2021 clarified that the interest is non-compounding and non-adjustable for all new PPP and PPP second draw loans.

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?
The loans are available until March 31, 2021 unless Congress acts to extend the program again.

How long do I have to decide whether to apply for a loan?
The loans are available until March 31, 2021, unless Congress acts to extend the program again.

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 within the United States, you qualify.

If you have over 500 employees within the United States, it gets trickier. Employers in the “Accommodation and Food Services” industry can have more than 500 employees within the United States, provided they do not have more than 500 employees per U.S. location. Additionally, businesses in certain industries can have more than 500 employees within the United States 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. See the SBA interim final rule (IFR) for more information on the qualifications and calculations for these entities.

As for nonprofits, 501(c)(3) nonprofits are eligible. Additionally, 501(c)(6) nonprofits who employ less than 300 employees are eligible if not more than 15% of their receipts come from lobbying activities; their lobbying activities are not more than 15% of their total activities; and the cost of lobbying did not exceed $1M during their most recent tax year ending before 2/15/20.

The Consolidated Appropriations Act, 2021 clarified that publicly traded companies are not eligible for the loans. The Act also clarified that a business or organization that was not in operation on February 15, 2020 is not eligible for a PPP loan.

Finally, the Consolidated Appropriations Act, 2021, also created the ability of certain borrowers to obtain “second draw” loans. To be eligible for a PPP second draw loan, an employer must:
  o have used, or will use, the full amount of the initial PPP loan,
  o have no more than 300 employees (500 if more than one location), and
  o demonstrate at least a 25% reduction in gross receipts as compared to same quarter in 2019 (with caveats for new businesses).
In addition, the employer cannot:
- primarily engage in political or lobbying activities (which shall include 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),
- have certain ties to China,
- be a foreign agent, or
- have received grants as “shuttered venue operators.”

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 for first draw loans. In describing the employee limit, the law states that these employers are eligible “in addition to small business concerns[.]” (Emphasis added.)

Note that eligibility for second draw loans includes a requirement to show a 25% reduction in gross receipts between any quarter in 2019 and the same quarter in 2020.

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.

Should I count employees at any affiliated entities to determine whether I am eligible?
Yes. To help determine whether an entity is affiliated to any others, the SBA has posted information regarding the affiliation rules for the PPP here.

Note that, for the PPP, 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); or (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.

**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 $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.

With regard to second draw loans, the maximum loan is the lesser of: $2M or 2.5 times the average monthly payroll during 2019 or during one-year period before the loan date, whichever the borrower chooses. (Note that certain entities in the hospitality industry are subject to a higher payroll cap.) The law specifies different calculations for seasonal employees and for entities that did not exist within one year before February 15, 2020. It also re-states the requirement that, to receive full forgiveness, at least 60% of the loan amount must be used for payroll costs.

Note: The [Consolidated Appropriations Act, 2021](#) also clarified that a PPP loan recipient that has not completed the loan forgiveness application may request an increase of loan amounts due to the expansion of allowable uses (see below), provided certain conditions are met.

**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)
- Interest on any mortgage obligation for real or personal property (but not any principal payment) on obligations incurred before February 15, 2020 (to the extent they are deductible)
- Rent for real or personal property, under lease agreements in force before February 15, 2020 (to the extent they are deductible)
- Utilities, for which service began before February 15, 2020 (to the extent they are deductible)
- Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020, provided that the EIDL loan was for payroll expenses

Additionally, for first draw loans that were not forgiven yet as of December 27, 2020 or any loans issued after December 27, 2020, the following are allowable uses.

- **Covered operations expenditures:** any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses
- **Covered property damage costs:** a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 and that was not covered by insurance or other compensation
• **Covered supplier costs**: expenditure to a supplier of goods for the supply of goods that are essential to the operations at the time the expenditure was made and is made pursuant to a contract, order, or purchase order in effect before the covered period or, for perishable goods, before or at any time during the covered period

• **Covered worker protection expenditures**: an operating or capital expenditure to facilitate the adaptation of business activities to comply with requirements or guidance from HHS, CDC, or OSHA, or any equivalent requirements by state or local government between March 1, 2020 and end of PHE related to sanitation, social distancing, or customer safety related to COVID.

Note: The *Consolidated Appropriations Act, 2021* clarified that a PPP loan recipient that has not completed the loan forgiveness application may request an increase of loan amounts due to the expansion of allowable uses, provided certain conditions are met.

**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 cash compensation (including bonuses and hazard pay) for employees (but not owners) living in the United States, capped at $100,000 on an annualized basis for each employee;
- Owner compensation replacement, subject to certain limitations;
- Employment costs for employees living in the United States 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,
- Payments for group life, disability, vision or dental insurance; and
- Payment of State or local (but not federal) 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 use loan proceeds towards 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?**
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 loans that were already forgiven on December 27, 2020, the answer is no. With regard to loans not forgiven as of that date or loans issued after that date, the answer is unclear. The Consolidated Appropriations Act, 2021 expanded allowable uses to include “covered supplier costs,” which is an expenditure paid to a supplier of goods that are essential to the operations at the time the expenditure was made and that is made pursuant to a contract or purchase order in effect before the covered period or, for perishable goods, before or at any time during the covered period. SBA may provide further guidance on this point, including whether the “perishable goods” category can include things like biologic medicines, in addition to the more clear-cut scenario of restaurants ordering food items.

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

**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 to receive full forgiveness of the loan.

**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?**
A maximum of two, assuming you qualify for a second draw loan, which requires, among other things, that you employ fewer than 300 employees (500 if more than one location) and demonstrate at least a 25% reduction in
gross receipts as compared to same quarter in 2019 (with caveats for new businesses). This revenue loss requirement does not exist for first draw loans.

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.

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?
The “forgiveness” period begins on the date of loan origination and lasts between 8 and 24 weeks, at the borrower’s choosing. In addition to the “allowable uses” limitations, note that at least 60% of loan proceeds must be spent on 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. 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%. Additionally, the Consolidated Appropriations Act, 2021 directed SBA to implement a simplified process for loans under $150,000.

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.

For additional information, please consult the standard application for loan forgiveness, which may be accessed here, as well as your lender, who will be processing your application. 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. Again, there will be a simpler process for loans under $150,000.

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?
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.

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 available whether or not a loan is received under the PPP. 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.

Can I deduct my business expenses like I would any other year?
The Consolidated Appropriations Act, 2021 clarifies that gross income does not include any amount that would otherwise arise from the forgiveness of a PPP loan. This provision also clarifies that deductions are allowed for otherwise deductible expenses paid with the proceeds of a PPP loan that is forgiven, and that the tax basis and other attributes of the borrower’s assets will not be reduced as a result of the loan forgiveness. The provision is effective retroactively, 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.

Additional Resources

SBA Second Draw Borrower Application Form
SBA Interim Final Rule: Paycheck Protection Program (PPP) as Amended by the Economic Aid Act (01/06/2021)
SBA Interim Final Rule: Paycheck Protection Program (PPP) Second Draw Loans (01/06/2021)
IRS guidance on deductibility (01/06/2021)
Small Business Administration PPP information
How to Calculate Loan Amounts
IRS FAQ (updated regularly)
Find an eligible lender
CMS information re: Medicare cost reporting for PPP loans