



Small Business Paycheck Protection Program

Please find below a summary of the Paycheck Protection Program, which was:

- A key provision for small business included in [H.R. 748](#), the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*,
- further updated in [H.R. 7010](#), the *Paycheck Protection Program Flexibility Act of 2020*,
- extended in [S. 4116](#),
- further extended by the *Consolidated Appropriations Act, 2021* (Rules Committee Print [116-68](#)), and
- further extended by [H.R. 1799](#), the *PPP Extension Act of 2021*.

This is a preliminary analysis of key provisions and should be reviewed with caution, given that the underlying legislative language may be subject to further amendment and will be subject to further interpretation by the Small Business Administration (SBA). Further, given the nature of this new program, information may change as the SBA and others address key outstanding issues.

Note: Current law dictates that the Paycheck Protection Program (PPP) close after June 30, 2021.

Paycheck Protection Program

The *CARES Act* establishes a “Paycheck Protection Program” in Section 1102, with additional modifications noted above. The goal of this Paycheck Protection Program is to enable employers to carry their payroll and other operating costs through this crisis. This program is administered by the [Small Business Administration \(SBA\), with the support of the Department of Treasury](#). Logistical details are as follows.

The *Consolidated Appropriations Act, 2021* also established “second draw” PPP loans, which are discussed separately in the document. Unless otherwise specified in the “second draw” section, the mechanics of both loans are the same.

Timeframe

The loans are **unavailable after June 30, 2021**. And, the SBA has further clarified that the loans will be made on a first come, first serve basis.

For purposes of this document, the “covered period” is the time from the loan origination for at least 8 weeks and up to 24 weeks, at the discretion of the borrower.

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Amount

The legislation establishes a cap of \$10 million per loan or 250% of the average monthly payroll, whichever is less. 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.

How to 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. A list of participating lenders as well as additional information and full terms can be found at www.sba.gov. To assist you with finding a lender, the SBA has added a lender finder [here](#).

The SBA as provided the following resources for applying for First Draw Loans:

- [PPP First Draw Borrower Application Form](#)
- [PPP First Draw Borrower Application Form for Schedule C Filers Using Gross Income](#)
- [Top-line Overview of PPP First Draw Loans](#)
- [How to Calculate First Draw PPP Loan Amounts and What Documentation to Provide - by business type](#)
- [Borrower's Disclosure of Certain Controlling Interests](#)
- [Frequently Asked Questions for Faith-Based Organizations Participating in the PPP and Economic Injury Disaster Loan Program](#)
- [PPP Myth vs. Fact](#)
- [Cross-Program Eligibility on SBA COVID-19 Relief Options](#)

Eligibility

According to the [SBA](#), the following entities affected by COVID-19 may be eligible:

- Sole proprietors, independent contractors, and self-employed persons;
- Any small business concern that meets SBA's size standards (either the industry size standard or the alternative size standard);
- Any business, 501(c)(3) non-profit organization, 501(c)(19) veterans organization, or tribal business concern (sec. 31(b)(2)(C) of the Small Business Act) with the greater of:
 - 500 employees, or
 - That meets the SBA industry size standard of more than 500; or
- Any business with a NAICS code that begins with 72 (Accommodations and Food Services) that has more than one physical location and employs less than 500 per location.

For information on the affiliation rules, visit the SBA's [Paycheck Protection Program Affiliation Rules](#)) and here the SBA's [Interim Final Rule for Applicable Affiliation Rules](#).

Payroll Costs Defined

Per the statute, "payroll costs" are broadly defined, as including:

- A salary, wage, commission, tips, or similar cash compensation for employees (but not owners) living in the United States (capped at \$100,000 on an annualized basis for each employee),
- 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, and
- Payment of employer state or local taxes assessed on employee compensation (e.g., state unemployment insurance tax).

The SBA loan forgiveness application clarifies that dismissal or separate payments are included as cash compensation for eligible employees. In addition, bonuses or “hazard pay” would also be eligible payroll costs. The *Consolidated Appropriations Act, 2021* clarified that employer costs (benefits) include group life, disability, vision or dental insurance.

Payroll costs specifically exclude: 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., any paid sick or family leave for which a credit is claimed under the *Families First Coronavirus Response Act*, and any qualified wages taken into account in determining the Employee Retention Credit.

Allowable Uses

During the covered period, the recipient may use the loan for the following uses. Note: The items in **bold** are additional clarifications from the SBA/IRS guidance, while the information in italics was added as part of the initial SBA interim final rule or the forgiveness application. Finally, the underlined items were added as part of the *Consolidated Appropriations Act, 2021* and only apply to loans that (as of December 27, 2020) have not been forgiven. 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, provided certain conditions are met.

- Payroll costs (see above)
- 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 for income tax purposes)*
- Rent for *real or personal* property, **under lease agreements in force before February 15, 2020** *(to the extent they are deductible for income tax purposes)*
- Utilities, **for which service began before February 15, 2020** *(to the extent they are deductible for income tax purposes)*
- *Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020, provided that the EIDL loan was for payroll expenses*
- 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 [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.” Therefore, borrowers should be able to use the loans for leased or mortgaged office equipment. However, to receive full loan forgiveness, not more than 40% of the loan amount may be for non-payroll costs.

Note: The *Consolidated Appropriations Act, 2021* prohibits the use of loan proceeds for lobbying activities.

Process

An eligible recipient shall make a good faith certification that the uncertainty of current economic conditions makes the loan necessary to support ongoing operations. The recipient must further certify that funds will be used to maintain payroll, make mortgage, lease, and utility payments. Finally, the recipient must certify that it does not have any duplicative applications. Fees are waived and the usual 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. Recent [SBA](#) guidance indicates that the interest will be 1.0%, with a maturity in 2 years, except for loans with an origination date after June 5, 2020. For those loans, the loan maturity is 5 years. Note that, for loans originating before June 5, 2020, the parties may amend loan terms by mutual agreement. Prepayment penalties are prohibited.

Loan Forgiveness

The [SBA](#) notes that, with respect to loan forgiveness, First and Second Draw PPP loans made to eligible borrowers qualify for full loan forgiveness if during the 8- to 24-week covered period following loan disbursement:

- Employee and compensation levels are maintained;
- The loan proceeds are spent on payroll costs and other eligible expenses; and
- At least 60% of the proceeds are spent on payroll costs.

For more information on the loan forgiveness process, visit the following SBA resources:

- [Frequently Asked Questions about PPP Loan Forgiveness](#)
- [SBA Form 3508 PPP Loan Forgiveness Application](#)
- [SBA Form 3508EZ PPP Loan Forgiveness Application](#)
- [SBA Form 3508S PPP Forgiveness Application](#)
- [Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act](#)

Timeline For Forgiveness

Within 60 days after a lender receives an application for loan forgiveness, the lender must issue a decision. Within 90 days after the date on which the amount of forgiveness is determined, the SBA shall remit that forgiveness amount, with interest, to the lender.

Information on any Unforgiven Amounts/Payments

All payments are deferred until the loan forgiveness application is approved or, if no loan forgiveness application is filed within ten months of the loan origination date, then ten months; however, interest will continue to accrue over this period. The interest rate is a 1% fixed rate. The *Consolidated Appropriations Act, 2021* clarified that the interest is non-compounding and non-adjustable for all new PPP and PPP second draw loans.

The loan becomes due after two years for PPP loans made before June 5, 2020 (unless the borrower and lender mutually agree to extend the maturity of such loans to five years) or five years for PPP loans made on or after June 5, 2020. There are no prepayment penalties or fees.

Misuse of Funds

If you use PPP funds for unauthorized purposes, 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.

However, if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges against you.

Interaction of Other Loan Programs

You can only take out one PPP loan (and, if eligible, one PPP second draw loan). 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. As part of the SBA interim final rule, the SBA clarified that, if you have an EIDL loan with the purpose of offsetting payroll costs, then you must refinance that loan as part of the PPP, minus the amount of the EIDL grant award of up to \$10,000.

Tax implications

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 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.

Paycheck Protection Program Second Draw Loan

Unless specified below, the PPP Second Draw loan program follows the same process and requirements as the original PPP loan. The key distinction, thus far, is eligibility, maximum loan amount for such loans, and a simplified process for certain loans.

The SBA has provided the following resources for Second Draw Loans:

If you wish to begin preparing your application, you can download the following PPP borrower application form to see the information that will be requested from you when you apply with a lender:

- [PPP Second Draw Borrower Application Form](#)
- [PPP Second Draw Borrower Application Form for Schedule Filers Using Gross Income](#)
- [Top-line Overview of Second Draw PPP Loans](#)
- [Second Draw PPP Loans: How to Calculate Revenue Reduction and Maximum Loan Amounts Including What Documentation to Provide](#)

Eligibility

To be eligible for a PPP second draw loan, an employer must:

- have used, or will use, the full amount of the initial PPP loan,
- have no more than 300 employees (500 if more than one location),
- demonstrate at least a 25% reduction in gross receipts as compared to same quarter in 2019 (with caveats for new businesses), and

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.”

Loan amount

Maximum loan amount (except for certain entities in the hospitality industry) 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. The law specifies different calculations for seasonal employees and for entities that did not exist within one year of 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.

Simplified Process

SBA must develop a simplified process for both the loan application and loan forgiveness for loans of less than \$150,000.