

FAQ: US CARES Act SBA Paycheck Protection Program

April 2020



Building a better
working world

Information contained in this document is based upon program details that are rapidly evolving. Advice should be considered preliminary and should not be relied upon. For the most up-to-date guidance, EY recommends you consult the SBA (www.sba.gov), Department of the Treasury (www.treasury.gov) and your own legal and tax advisors prior to taking any action

What is the Paycheck Protection Program?	The Paycheck Protection Program (PPP) provides \$349b in COVID-19 impact relief for small businesses and certain individuals and entities through federally backed loans under a modified and expanded Small Business Administration (SBA) 7(a) loan guaranty program called the Paycheck Protection Program.	
Is PPP a small business grant?	The PPP is not a grant. Loans under the Paycheck Protection Program (PPP) will be 100% guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness, subject to certain limitations. All amounts not forgiven, remain eligible for the SBA guaranty, but are expected to be repaid with interest.	
What are the key differences between PPP loans and SBA 7(a) and 7(a) express loans?	PPP loans <ul style="list-style-type: none">▶ No down payment, collateral or personal recourse▶ No need to show inability to obtain credit elsewhere▶ 100% SBA guarantee▶ \$10m maximum▶ Current interest rate fixed at 1% (not to exceed a maximum of 4% per the CARES Act)▶ Current maturity fixed at 2 years (maximum maturity of up to 10 years allowed by the CARES Act)▶ Payments deferred for six months	Traditional SBA 7(a) <ul style="list-style-type: none">▶ Typically requires down payment, collateral and personal recourse▶ Need to demonstrate inability to obtain credit elsewhere▶ 75% or 85% SBA guarantee depending upon loan amount▶ \$5m maximum▶ Terms up to 25 years for real estate and equipment, 7 years for working capital

<p>What is the difference between a PPP loan and an Economic Injury and Disaster Relief Loan (EIDL)</p>	<p>The EIDL program is administered by the SBA and disburses funds directly to borrowers.</p> <ul style="list-style-type: none"> ▶ Loans are granted up to \$2m based on creditworthiness and ability to repay ▶ Includes an advance of \$10,000 for approved purposes (see below) when applying that does not need to be repaid. Borrower must self-certify that advance is used for approved purposes: paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments and repaying obligations that cannot be met due to revenue losses ▶ Credit elsewhere requirement does not apply ▶ Business needs to have been in operation prior to January 31, 2020 ▶ Can be used in conjunction with a PPP loan, so long as the PPP loan is not used for duplicate purposes ▶ Can be refinanced into a PPP loan ▶ Requires that an advance payment be considered when determining loan forgiveness, if the applicant transfers into a loan made under the PPP
<p>How is the loan amount determined?</p>	<p>The maximum loan amount is the lesser of \$10m or 2.5 times average monthly payroll costs (including vacation, sick leave and other elements defined in the Act) based on the prior year's payroll costs (as defined, not including compensation in excess of \$100,000 per employee) plus EIDL loans taken out from January 31, 2020 through April 3, 2020.</p>
<p>Does participation in other loan programs impact eligibility for PPP?</p>	<p>Participants in other programs are eligible, but disbursed amounts may be reduced to the extent that relief was granted in other programs for similar uses. The PPP specifically allows refinancing of disaster relief and refinance of SBA loans made since January 31, 2020 (see: What is the difference between a PPP and Economic Injury Disaster Relief Loan?).</p>
<p>What are the approved uses of PPP loans?</p>	<p>The PPP offers loans covering certain costs during the covered period from February 15, 2020 through June 30, 2020, including:</p> <ul style="list-style-type: none"> ▶ Payroll costs ▶ Cost of health care benefits ▶ Salaries, commissions and other compensation ▶ Interest only for mortgage 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 ▶ Interest on other debt incurred before the covered period
<p>Program eligibility</p>	
<p>Who is eligible to apply for a PPP loan?</p>	<p>Entities not previously included within traditional SBA loan programs can be eligible for PPP loans. Additionally, certain businesses with more than one location that previously exceeded SBA size limitations may also be eligible. The CARES Act expanded eligibility to:</p> <ul style="list-style-type: none"> ▶ Businesses, nonprofit organizations, veterans' organizations and tribal small business concerns that employ no more than the greater of either 500 employees or the size standard established by the SBA for industries ▶ Sole proprietorships, independent contractors and eligible self-employed individuals ▶ Certain businesses with more than one physical location that are food and accommodations businesses or franchises <p>Please note that eligible businesses must operate and be physically located in the US or its territories and must have been in operation on February 15, 2020.</p>

<p>What are the SBA affiliation rules and how do they impact a borrower's eligibility for a PPP loan?</p>	<p>An affiliation exists when one business controls or can control another or when a third party (or parties) has the power to control both businesses. The SBA's affiliation rule is used in conjunction with the SBA size standard to determine whether a potential borrower meets the definition of a small business concern. Under the CARES Act, the rule applies when determining eligibility for a PPP loan, with the exception of businesses in the hotel accommodations and food services industries (NAIC code begins with 72) or franchises that have been vetted with the SBA and have been assigned a franchise identifier code by the SBA.</p> <p>The SBA is updating the approved franchise list on a regular basis, as new applications for franchises are being processed. Lenders and borrowers should check the Franchise List on the SBA website for the latest information.</p>
<p>My workforce includes independent contractors. May I include their compensation in my payroll costs?</p>	<p>No. The U.S. Treasury has issued guidelines clarifying that independent contractors do not count as employees for purpose of PPP loan calculations.</p>
<p>What if I am a sole proprietor or self-employed? Can I apply for a PPP loan?</p>	<p>Yes, both sole proprietors and self-employed individuals are eligible for the PPP. Sole proprietorships can apply starting on April 3, 2020. Self-employed individuals can apply for a PPP loan starting on April 10, 2020 (see: Who is eligible to apply for a PPP loan?).</p>
<p>Who can issue PPP loans?</p>	<p>Any existing SBA lender can issue PPP loans. In addition, the CARES Act expands program administration to include insured depository institutions, insured credit unions and other lenders that the SBA and Secretary of the Treasury determine are qualified.</p>
<p>How do I become an approved lender to participate in the program?</p>	<p>The U.S. Treasury has issued guidelines. Lenders can only participate if their participation does not impact their safety and soundness and are not currently subject to enforcement actions related to safety and soundness or are classified as troubled.</p>

Loan origination

<p>What is required to originate PPP loans?</p>	<p>Lenders have been delegated authority to make and approve covered loans. Lenders will need to verify that a borrower was in operation on February 15, 2020. They will also need to verify that a borrower had employees for whom the borrower paid salaries and payroll taxes. Lenders will need to verify the dollar amount of average monthly payroll costs. Lenders will need to follow applicable Bank Secrecy Act requirements. Lenders cannot connect any fees from the borrower but are entitled to be compensated for origination fees by the SBA as follows, based on the balance of the financing outstanding at the time of final disbursement:</p> <ul style="list-style-type: none"> ▶ Loans \$350,000 and under: 5.00% ▶ Loans greater than \$350,000 to \$2 million: 3.00% ▶ Loans greater than \$2 million: 1.00%
<p>How do I calculate the maximum loan amount?</p>	<p>The following methodology, which is one of the methodologies contained in the CARES Act, will be most useful for many applicants:</p> <ol style="list-style-type: none"> 1. Aggregate payroll costs over a 12-month period preceding the loan date for employees whose principal place of residence is the United States. 2. Subtract any compensation paid to an employee in excess of an annual salary of \$100,000. 3. Calculate average monthly payroll costs (divide the amount from step 2 by 12) 4. Multiply the average monthly payroll costs from Step 3 by 2.5. <p>Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan.</p>

<p>What documentation will I need to determine average monthly payroll cost?</p>	<p>Borrowers must submit such documentation as is necessary to establish eligibility, such as payroll processor records, payroll tax filings or Form 1099-MISC, or income and expenses from a sole proprietorship. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.</p>
<p>For what purpose do I need to determine my average monthly payroll cost?</p>	<p>Employers will be required to determine payroll costs over various points in time for multiple purposes: (1) loan proceeds may be used for specific enumerated purposes, including payroll costs, (2) the maximum loan amount is determined by reference to payroll costs, and (3) payroll costs will determine the extent to which loans are forgiven.</p>
<p>How do I determine my payroll costs?</p>	<p>What qualifies as “payroll costs”?</p> <p>Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income or net earnings from self-employment or similar compensation.</p> <p>Is there anything that is expressly excluded from the definition of payroll costs?</p> <p>Yes. The Act expressly excludes the following:</p> <ul style="list-style-type: none"> i. Any compensation of an employee whose principal place of residence is outside of the United States ii. The compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary iii. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee’s and employer’s share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees iv. Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act

<p>Over what time period do I determine my payroll costs?</p>	<p>When determining the maximum loan amount, most businesses will look to their payroll costs incurred in 2019 to determine their average monthly payroll cost. However, seasonal businesses can elect to calculate average monthly payroll cost from the period of February 15, 2019 to June 2019. New businesses can calculate the average monthly payroll cost they incurred in the period from January 1, 2020 to February 29, 2020.</p>
<p>How can I determine the average monthly payroll costs for employees who earn greater than \$100,000 per year?</p>	<p>The amount of salary, wages, commissions or tips that is included in the calculation of payroll costs is capped at \$100,000 on an annualized basis for each employee. Businesses can identify these employees through payroll vendor documents and payroll software data. Payroll vendors are typically able to provide a detailed list, by employee, of quarter-to-date (QTD) and year-to-date (YTD) wages, taxes and other tax-related data.</p>
<p>What do lenders have to do in terms of loan underwriting?</p>	<p>Lenders' underwriting obligation under the PPP are limited to the items detailed in the Small Business Administration interim final rule which include:</p> <ul style="list-style-type: none"> ▶ Confirm receipt of borrower certifications on the application form ▶ Confirm receipt of information demonstrating that a borrower had employees on or around February 15, 2020 ▶ Confirm the dollar amount of average monthly payroll costs by reviewing the payroll documentation ▶ Follow applicable BSA requirements
<p>Are lenders expected to monitor how PPP loan funds are used?</p>	<p>Typically, the SBA requires that lenders must use commercially reasonable and prudent practices to verify that disbursement is in accordance with the documented loan purpose. While the CARES Act does not specifically require lenders to monitor use of funds, it also does not waive normal servicing requirements of its SOP manual. The SBA should provide further guidance on monitoring and servicing requirements within the next 30 days.</p>
<p>Can I apply for more than one PPP loan?</p>	<p>No. The SBA determined that no eligible borrower may receive more than one PPP loan. This means that if you apply for a PPP loan you should consider applying for the maximum amount. While the Act does not expressly provide that each eligible borrower may only receive one PPP loan, the Administrator has determined, in consultation with the Secretary, that because all PPP loans must be made on or before June 30, 2020, a one loan per borrower limitation is necessary to help ensure that as many eligible borrowers as possible may obtain a PPP loan.</p>
<p>What borrower certifications need to be made?</p>	<p>Full details are available in the Small Business Administration interim final rule.</p> <p>Generally, on the Paycheck Protection Program application, an authorized representative of the applicant must certify in good faith:</p> <ul style="list-style-type: none"> ▶ Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC. ▶ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant. ▶ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments and utility payments. ▶ If the funds are knowingly used for unauthorized purposes, the federal government may hold the applicant legally liable, such as for charges of fraud. ▶ Borrower understands that documentation verifying the number of full-time equivalent employees on payroll, as well as the dollar amounts of payroll, mortgage interest payments, lease payments and utility payments used in the eight-week period following the loan, will be provided to the lender for forgiveness purposes. ▶ Borrower understands that not more than 25% of the forgiveness amount requested was for non-payroll costs. ▶ During the period beginning on February 15, 2020 through December 31, 2020, the applicant has not and will not receive another loan under this program. ▶ Information provided in the application and all supporting documents and forms is true and accurate in all material respects.

	<ul style="list-style-type: none"> ▶ Borrower understands that the lender will confirm the eligible loan amount using submitted tax documents that are identical to those submitted to the Internal Revenue Service.
Can I use e-signatures or e-consents if a borrower has multiple owners?	Yes, e-signature or e-consents can be used regardless of the number of owners.
What is the expected time to decision and fund PPP loans?	Processing time will vary by lender but is expected to be significantly less than traditional and express programs. It is anticipated that PPP guaranty decisions will be made more quickly since the loans are nonrecourse and no collateral is required.

Loan forgiveness program

What amounts are borrowers allowed to have forgiven under the CARES Act?	<p>Borrowers are permitted to apply for forgiveness of principal on proceeds from PPP loans for costs incurred during the eight-week period, beginning on date of origination. The amount that can be forgiven is the sum of:</p> <ul style="list-style-type: none"> ▶ Payroll costs for employees and contractors earning an annual salary of less than \$100,000 (including salary, commission payment for vacation, parental, family, medical or sick leave; allowance for dismissal or separation; payment required for the provisions of group health care benefits, including insurance premiums; payment of any retirement benefit; or payment of any state or local tax assessed on the compensation of employees) ▶ Mortgage interest on real or personal property (mortgage must have been incurred before February 15, 2020) ▶ Rent paid ▶ Utilities paid ▶ Additional wages paid to tipped employees
What factors can impact loan forgiveness under the CARES Act?	<p>The amount of loan forgiveness cannot exceed the principal amount of the financing made available. The amount of loan forgiveness may also be reduced if the borrower:</p> <ul style="list-style-type: none"> ▶ Reduces its employees measured from the period beginning on February 15, 2019 and ending on June 30, 2019 when compared to the covered period ▶ Institutes salary/wage decreases during the covered period that are in excess of 25% of the total salary or wages of the employee during the most recent full quarter ▶ Employers who re-hire workers previously laid off as a result of the COVID-19 crisis will not be penalized for having a reduced payroll at the beginning of the relevant period
I have already implemented a reduction my workforce. Can I rehire these employees and use the loan to pay for their wages?	Yes. Reductions in employment or wages that occur during the period beginning on February 15, 2020 and ending 30 days after the passing of the CARES Act shall not reduce the amount of loan forgiveness if the reduction in employees or wages is eliminated (i.e., employees are rehired or wages are restored) by the borrower by June 30, 2020.
Can lenders rely on borrower documentation for loan forgiveness?	Yes. The lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs. The Administrator will hold harmless any lender that relies on such borrower documents and attestation from a borrower.

Other questions

May I take a PPP loan and also defer payroll taxes under the CARES Act?	Payroll tax deferral is not available to a taxpayer that obtains a PPP loan if the loan is later forgiven. Additional guidance from Treasury and the IRS is needed to understand the impact of loan forgiveness on payroll taxes that were deferred prior to the date of forgiveness.
--	---

May I take a PPP loan and also receive the Employee Retention Credit created by the CARES Act?	No. Employers that receive a PPP loan are not eligible for the Retention Credit.
How do I decide whether the PPP loan or the Retention Credit is more valuable?	An employer can calculate the maximum Retention Credit that may be available and compare that to the maximum PPP loan, based on employee demographics. In addition to the quantitative value of the two opportunities, the employer should also consider how quickly the employer needs cash, as the PPP loan may provide liquidity faster than the Retention Credit.

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and the economies the world over. We develop outstanding leaders who team to deliver on our promises to all our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients, and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. For more information about our organization, please visit ey.com.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

© 2020 Ernst & Young LLP.
All Rights Reserved.

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax or other professional advice. Please refer to your advisors for specific advice.

ey.com