



## Small Business Administration's Paycheck Protection Loan Program FAQs

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### Paycheck Protection Program (PPP) in Brief

The PPP was established through the Coronavirus Aid, Relief, and Economic Security (CARES) Act in early April to aid small businesses with certain business costs during the pandemic. The PPP was operationalized through the SBA's 7(a) small business lending program, providing loans up to \$10 million per eligible borrower to be used for payroll, mortgage interest, rent and utilities. A total of \$349 billion in funding was exhausted in less than two weeks. Congress provided an additional \$310 billion in funding in late April amidst controversies over large organizations, or seemingly well-funded enterprises, being awarded loans.

Legislation thereafter was passed to provide additional flexibility to the program. Namely, the Paycheck Protection Program Flexibility Act of 2020 (PPPFA) was enacted on June 5, 2020. The FAQs below include the PPPFA changes as well as other guidance on the PPP requirements.

### Where can I apply for the Paycheck Protection Program?

You can apply for the Paycheck Protection Program (PPP) at any bank that already provides loans through the SBA 7(a) lending program or at federally-insured banks and credit unions that have opted to participate in the program (additional lenders may also be approved). This could be the bank you already use, or another nearby bank. You can find SBA-approved lenders in your area through SBA's online Lender Match tool; however, make sure you utilize a reputable bank.



## ELIGIBILITY

### Who is eligible for the loan?

You are eligible for a loan if:

- You are a business that employs 500 employees or fewer (including affiliates) that consists of:
  - for-profit business concerns
  - tribal businesses described in section 31(b)(2)(C) of the Small Business Act
  - 501(c)(19) veteran organizations
  - 501(c)(3) nonprofits
  - Faith-based organizations
  - Independent contractors, sole proprietors, self-employed individuals.
- Businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based OR revenue-based size standards for those industries (click [HERE](#) for additional detail);
- You are a restaurant, hotel, or a business that falls within NAICS code 72, “Accommodation and Food Services,” and each of your locations has 500 employees or fewer. You also do not need to count employees of any affiliates if you are one of these businesses.
- For franchises operating under an SBA franchise code, you do not need to count employees of any affiliates Eligible franchises can be found through [SBA’s Franchise Directory](#).
- A business that qualifies as a small business concern if it meets both tests in SBA’s “alternative size standard” as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 million; and (2) the average net income after Federal income taxes (excluding carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

### Are there any businesses that are specifically excluded?

Yes. The rules exclude household employers of nannies, housekeepers, etc. Also, with the exception of 501(c)(3)s and faith-based organizations, businesses that normally are excluded from SBA business loans are ineligible. Examples include:

- Financial businesses primarily engaged in the business of lending



- Passive businesses owned by developers/landlords that do not actively use or occupy the assets acquired or improved by the loan proceeds
- Life insurance companies
- Businesses located in a foreign country
- Private membership clubs and businesses
- Businesses deriving more than 1/3 of gross annual revenue from legal gambling activities
- Businesses primarily engaged in political or lobbying activities

**Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) required to have 500 or fewer employees to be eligible borrowers in the PPP?**

No. Small business concerns can be eligible borrowers even if they have more than 500 employees, as long as they satisfy the existing statutory and regulatory definition of a “small business concern” under section 3 of the Small Business Act, 15 U.S.C. 632.

A business can qualify if it meets the SBA employee-based or revenue-based size standard corresponding to its primary industry. Go to [www.sba.gov/size](http://www.sba.gov/size) for the industry size standards.

Additionally, a business can qualify for the PPP as a small business concern if it met both tests in SBA’s “alternative size standard” as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million. A business that qualifies as a small business concern under section 3 of the Small Business Act, 15 U.S.C. 632, may truthfully attest to its eligibility for PPP loans on the Borrower Application Form, unless otherwise ineligible.

**Which employees do I include when I calculate the number of employees to determine if my company qualifies?**

SBA counts all full-time employees, part-time employees, and employees obtained from a temporary employee agency, professional employer organization (PEO) or leasing concern. Any person on the payroll must be included as one employee regardless of hours worked or temporary status. Part-time and temporary employees are counted the same as full-time employees. Volunteers (i.e., individuals who receive no compensation, including in-kind compensation for work performed) are not considered employees.



For example, if a borrower has 200 full-time employees and 50 part-time employees, the borrower has a total of 250 employees. This differs for purposes of loan forgiveness, which uses the “full-time equivalent employee” count.

Only include those employees whose principal place of residence is in the United States. See IRS regulations (26 CFR § 1.121-1(b)(2)) for more information on determining principal place of residence.

When calculating the number of employees, you must include employees of all U.S. and foreign affiliates (if affiliation rules are not waived for your business).

### **What time period do I use to determine number of employees?**

Borrowers may use their average employment over either the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use employee count for the period between February 15, 2019, or March 1, 2019, and June 30, 2019. Alternatively, borrowers may elect to use SBA’s usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

### **What if I haven’t been in business for 12 months?**

An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average employee count for the period January 1, 2020 through February 29, 2020.

## **AFFILIATION RULES**

### **How are affiliates calculated in the employer size calculation?**

If applicable (more on that below), the average number of employees of a business concern with affiliates is calculated by adding the average number of employees of the business concern with the average number of employees of each affiliate.

### **How do we calculate recently acquired affiliates?**

If a business has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size



status include the employees of the acquired or acquiring concern.

### **Do we include affiliates in the calculation if the affiliate was sold during the past 12 months?**

The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size.

However, if a concern has sold a segregable division to another business concern during the applicable period of measurement or before the date on which it self-certified as small, the employees used in determining size status will continue to include the employees of the division that was sold.

### **Where do I find SBA's affiliation rules?**

SBA's rules on affiliation for section 7(a) Business Loans (except SBIR and STTR) are found at 13 C.F.R. § 121.103. The regulations are available online at <http://www.ecfr.gov>.

### **What are the general principles of affiliation?**

Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. The SBA will consider the totality of the circumstances when determining whether affiliation exists and may find affiliation even though no single factor alone may be enough to constitute affiliation.

The guidance sets forth four tests/circumstances that will establish affiliation for PPP applicants:

Equity Ownership – if an individual, concern, or entity owns or has the power to control more than 50% of the applicant's voting equity; absent such 50%+ ownership, SBA will consider the CEO, Board of Directors, or similar body in "control" of the applicant; it also will consider a minority shareholder that has the authority to block Board or other shareholder action to be in "control." If a minority shareholder irrevocably waives its existing rights, the minority shareholder will not be an affiliate of the business (unless otherwise qualifies).

Common Management – when the CEO or President (or similar manager) of the applicant also controls the management of one or more other concerns; or where an individual, concern or entity controls the Board/management of the applicant and the Board/management of one or more other concerns; or when a



single individual, concern, or entity controls the applicant through a management agreement.

Identity of Interest – when close relatives (spouse, parent, child, or sibling – or the spouse of any such person) have identical or substantially identical business or economic interests (e.g., they operate concerns in the same or similar industry in the same geographic area) (but note, applicants may rebut a finding of affiliation under this test and show that the businesses are separate and unaffiliated).

Stock options, convertible securities, and agreements to merge – generally will be considered to have power to control a concern and are treated as though rights granted have been exercised. However, no effect will be given for:

- Agreements to open or continue negotiations toward a possible merger or sale at a future date (don't count as agreements in principal);
- Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given effect; or
- Individuals', concerns', or other entities' ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

Religious Exemption. The relationship of a faith-based organization to another organization is not considered an affiliation with the other organization if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion.

#### **When are the affiliation rules waived for purposes of the PPP Program?**

- Business concerns with NAICS codes starting with 72 (accommodations or food service – use “primary industry” code);
- Operating as a franchise under an SBA franchise identifier code\*;
- Receiving financial assistance from Small Business Investment Act licensees; and
- Faith-based organizations if the affiliation is based on the exercise of religion.



**The affiliation rule based on ownership (13 C.F.R. 121.301(f)(1)) states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?**

No. If a minority shareholder in a business irrevocably waives or relinquishes any existing rights specified in 13 C.F.R. 121.301(f)(1), the minority shareholder would no longer be an affiliate of the business (assuming no other relationship that triggers the affiliation rules).

Example. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y and Company Z each own a single restaurant with 500 or fewer employees.

- Company Y and Company Z can each apply for a separate PPP loan, because each has 500 or fewer employees. The affiliation rules do not apply, because Company Y and Company Z each has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).

## **LOAN AMOUNT, USE, TERMS, APPLICATION PROCESS**

### **Loan Amount**

#### **What is the maximum amount I can borrow?**

The amount any small business is eligible to borrow is 250 percent of their average monthly “payroll costs”, up to a cap of \$10 million. This amount is intended to cover 8 weeks of payroll costs and some additional amounts for making payments towards debt obligations, rent, utilities, and other business expenses.

If a franchise brand is listed on the SBA Franchise Directory, each of its franchisees that meets the applicable size standard can apply for a PPP loan. There is a \$10 million cap on PPP loans per franchisee entity, and each franchisee is limited to one PPP loan.

#### **How do I calculate “Average Monthly Payroll” amount?**

For purposes of calculating “Average Monthly Payroll”, borrowers can use data either from the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019. An applicant that was not in



business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Include:

- Gross wages:
  - Salary, wage, commission or similar compensation
  - Cash tips or equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips)
  - Vacation, parental, family, medical or sick leave
  - Dismissal or separation allowance
- Payment of any retirement benefit
- Payment of state or local tax assessed on the compensation of employees
- Insurance premiums for group health care benefits, including only the employer contribution
- Group health care benefits during periods of paid sick leave, medical leave, or family leave
  - Includes medical, dental, vision, HRA (not life, workers' comp, disability, etc.)
- Exclude compensation over \$100,000 on an annualized basis for each employee
- Exclude any taxes paid by the employer (e.g., FICA) that are not state or local payroll taxes
- Exclude compensation to non-U.S. employees
- Exclude sick and family leave wages for which credit is allowed under the Families First Coronavirus Relief Act.

You can access free loan calculators on the AICPA's [PPP resource page](#).

### Calculate Average Payroll Costs

Step 1: Aggregate payroll costs (defined above: gross wages, payment for retirement benefits, state or local taxes on compensation, insurance premiums for group health programs) from the last twelve months for employees or from 2019.

Step 2: Subtract any cash compensation paid to an employee in excess of an annual salary of \$100,000

Step 3: Calculate average monthly payroll costs (divide the amount from Steps 1 and 2 by 12).

Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

Step 5: 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.





### Example Calculation of Maximum Loan Amount

Assume that three employees make more than \$100,000 annually

Step 1: Annual payroll: \$1,500,000

Step 2: Subtract compensation above an annual salary of \$100,000:  $\$1,500,000 - \$300,000 = \$1,200,000$

Step 3: Average monthly qualifying payroll:  $\$1,200,000 / 12 = \$100,000$

Step 4: Multiply by 2.5 =  $\$100,000 \times 2.5 = \$250,000$

Maximum Loan Amount: \$250,000 (assuming no other SBA loans)

### How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

Under the Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of FICA and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of federal payroll tax.

**Example:** an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs for purposes of the PPP.

### Do independent contractors count as employees for purposes of average monthly payroll costs?

No. Independent contractors may apply for a PPP loan on their own, so they do not count for purposes of a borrower's PPP loan calculation.

### What if I am a seasonal employer, do I have to include the entire 12-month period?

For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019.



### **What if I have not been in existence for 12-months?**

An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

### **My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business's operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible?**

In evaluating a borrower's eligibility, a lender may consider whether a seasonal borrower was in operation on February 15, 2020 or for an 8-week period between February 15, 2019 and June 30, 2019.

### **How are S Corporations treated under the Payroll Protection Program?**

If you are an S Corporation owner and have been paying yourself a reasonable salary through payroll, you would apply for a PPP based on your average monthly W2 salary for 2019 times 2.5. While it is unclear, it appears distributions or dividends from a corporation will not be considered to be a salary or self-employment income. Also, payments made to contractors aren't considered payroll and aren't eligible under the PPP.

### **How does a sole proprietor calculate the loan amount for the PPP?**

If you are a sole proprietor and report your income through a Schedule C, your salary is determined by your net profit. If you were operational in 2019 and have filed your 2019 taxes, this will be reported on line 31 of your Schedule C. If you have yet to file your 2019 taxes, but have bookkeeping for your business through 2019, this will be the Net Profit line on your income statement.

Your monthly average payroll expense will be your annual net profit divided by 12. If your annual net profit is over \$100,000, you may only claim up to \$100,000 divided by 12. Your loan amount will be that amount times 2.5, or \$20,833.33.

### **What if I am a sole proprietor but I run the business with my wife?**

If you run a sole proprietorship with a spouse, you may only apply for the PPP once, and your spouse would not be considered to have a salary through the business unless he or she was paid as a contractor prior to February 15, 2020 – in which case, your spouse would apply separately.



### **I'm an independent contractor (1099), how do I apply for the PPP?**

If you work as an independent contractor your income is reported on the Schedule C of your 1040, and you will use your 1099-MISC to determine your salary and loan amount.

You would divide your net salary (anything below \$100,000) by 12 and multiply that number by 2.5 to get your loan amount. Remember to use your net salary, meaning income after expenses.

### **I'm a C-Corp small business. I take no salary and use 1099 sub-contractors. Am I eligible?**

If your only source of income is through distributions or dividends from a corporation, you will not qualify. Payments made to independent contractors also may not be used to determine payroll costs. Instead, you may qualify for the SBA [Disaster Loan \(EIDL\) program](#) tied to COVID-19.

### **What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?**

SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on As of April 6, 2020 the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

### **Use of Loan Proceeds**

#### **What can I use the Loan for?**

- Payroll costs, including health and retirement benefits (as outlined above);
- Interest on 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;



- Refinancing of an SBA Economic Injury Disaster Loan (EIDL) made between Jan. 1, 2020 and Apr. 3, 2020
- Interest on any other debt obligations incurred before February 15, 2020.

Note: PPP loans cover payroll costs, which includes vacation, parental, family, medical, and sick leave. However, you may not use the funds to pay for FFCRA leave for which you received a refundable credit.

### **Loan Terms**

The interest rate on any PPP loan will be 1%, which is an increase from the 0.5% previously announced. Consistent with the SBA's prior guidance, the term of each loan will be two years (which is below the 10 year limit specified in the CARES Act), subject to a six-month deferment period (also less favorable than the one-year deferment period authorized by the CARES Act). According to the new legislation, the term may be extended up to five years if the lender and borrower agree. However, interest will continue to accrue during the six-month deferment. No collateral or personal guarantees are required.

### **Loan Application**

#### **What is Required for the Loan Application?**

There is a standard PPP loan application (SBA Form 2483), which is significantly streamlined compared to normal SBA Business Loan applications. Bank underwriting obligations for PPPs are very limited (essentially, verifying that documentation is submitted, payroll averages are substantiated, etc.) and banks may rely on borrowers' documentation and certifications to determine eligibility.

The application generally requires:

- Basic business identification information;
- A list of all owners of the applicant with 20% or greater ownership stake;
- A list of any businesses under common ownership or management with the applicant;
- Details on any EIDL loan received by the business between January 1, 2020 and April 3, 2020;
- Information about individual applicants' and 20%-plus owners' criminal history; and
- The good-faith certifications described below.



The only blanket “borrower requirements” imposed are certain good-faith certifications. An authorized business representative must certify, among other things:

- The applicant was in operation on February 15, 2020 and paid workers at that time and is otherwise eligible for a PPP.
- The loan is needed to “support ongoing operations” during the COVID-19 emergency.
- Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments.
- You will provide the lender with documentation that verifies the number of full-time equivalent employees (calculated pursuant to the guidance below) on payroll and the dollar amounts of forgiveness-eligible costs for the eight (or 24) weeks after getting the loan.
- Loan forgiveness will be based on the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, but not more than 25% of the forgiven amount may be for non-payroll costs (as discussed below).
- The applicant has not and will not receive another PPP from now until December 31, 2020.
- All the information you provided in your application and in all supporting documents and forms is true and accurate. Knowingly making a false statement to get a loan under this program is punishable by law.
- You acknowledge that the lender will calculate the eligible loan amount using the tax documents you submitted.

Note that you will not be approved for a loan if you are presently involved in a bankruptcy or if the business or any owner has defaulted on a federal government loan in the last seven years, among other circumstances.

### **What Other Documentation Do I Need to Submit with My Application?**

This ultimately will be up to your bank – you should check with them to determine the documentation they will accept. At a minimum, all applicants will need to supply some type of payroll documentation to their lender along with Form 2483. SBA FAQs suggest that payroll reports from recognized third-party processors will suffice.

SBA guidance clarifies that it is the borrower’s obligation to accurately calculate payroll costs and lenders need only do a “good faith review in a reasonable time” – but ultimately, the lender may rely on the borrower’s certification that the numbers submitted are correct.



### **May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?**

Yes. However, the borrower should bear in mind that, as the Borrower Application Form indicates, only an authorized representative of the business seeking a loan may sign on behalf of the business. An individual's signature as an "Authorized Representative of Applicant" is a representation to the lender and to the U.S. government that the signer is authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant's equity, contained in the Borrower Application Form. Lenders may rely on that representation and accept a single individual's signature on that basis.

### **Do I have to prove that my PPP loan request is necessary?**

All borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 18, 2020 will be deemed by SBA to have made the required certification in good faith. Also, 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. If a borrower obtains a loan for more than \$2 million, the loan will be subject to SBA review of the good-faith certification. If the SBA determines that a borrower lacked an adequate basis for the certification, the SBA will seek repayment of the loan balance. If the loan is repaid, the SBA will not pursue administrative enforcement.



## LOAN FORGIVENESS

If certain conditions are met (identified below), the maximum available forgiveness amount (capped at principal amount of the loan) is the sum of the following incurred and paid within 8 (or 24) weeks of your loan origination (the “forgiveness period”):

- Payroll costs (as defined above);
- Interest on mortgage obligations incurred before February 15, 2020;
- Rent obligations in place since before February 15, 2020; and
- Utility payments for services that began before February 15, 2020.

Limitations for maximum loan forgiveness:

- Proceeds must be used for the expenses outlined above;
- No more than 40% of the loan forgiveness amount may be attributable to non-payroll costs
- Dollars spent more than 8 (or 24) weeks after your loan is originated, even for these forgiveness-eligible expenses, will not be included in your forgiveness amount
- Non-eligible expenses will not be forgiven (you may use them for inventory, for example, but the expense will not be forgiven)

Additional Penalties that Reduce the Forgiveness Amount:

- Proportionately for reductions (compared to pre-crisis levels from 2019 or early 2020) in the number of full-time equivalent employees during the 8-week (or 24-week) forgiveness period;
- Via a straight reduction for payroll reductions over 40% (compared to the prior completed quarter of employment) for workers making less than \$100,000 annually; and
- For any advances taken on SBA EIDLs.

However, if you have laid off some employees, you can still be forgiven for the full amount of your payroll cost if you rehire your employees (or restore salaries) by December 31, 2020. In addition, borrowers may exclude from the calculations employees who turned down good faith offers to be rehired at the same hours and wages as before the pandemic. Also, borrowers may adjust the required employee count if the employer is unable to rehire former employees and is unable to hire similarly qualified employees or unable to restore their business operations to Feb. 15, 2020 levels due to compliance with federal requirements or guidance related to COVID-19.



### **How do I calculate full-time equivalent employees (FTEE) for purposes of the forgiveness?**

Step 1: Calculate the number of employees who worked 40 or more hours per week.

Step 2: For employees who were paid for less than 40 hours per week, borrowers may choose to calculate the full-time equivalency in one of two ways:

- a. Calculate the average number of hours a part-time employee was paid per week during the covered period. For example, if an employee was paid for 30 hours per week on average during the covered period, the employee equates to an FTE employee of 0.75.
- b. For administrative convenience, borrowers may elect to use a full-time equivalency of 0.5 for each part-time employee.

Step 3: Aggregate total of FTE employees for both the selected reference period and the covered period or the alternative payroll covered period, by adding together the full-time and part-time FTE calculations. The borrower must then divide the average FTE employees during the covered period, or the alternative payroll covered period by the average FTE employees during the selected reference period, resulting in the reduction quotient – if applicable.

### **Can I include payments to independent contractors in “payroll costs” for purposes of the forgiveness?**

According to the interim final rule: No, independent contractors can apply for a PPP loan on their own, so they do not count for purposes of a borrower’s PPP loan forgiveness.

### **The amount of forgiveness of a PPP loan depends on the borrower’s payroll costs over an eight-week period (or 24-week period); when does that eight-week (or 24-week) period begin?**

Generally, the eight-week (or 24-week) period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.

However, a slight change was added to allow some flexibility with the payroll cycle. The application and rule permit borrowers to elect to start their eight-week (or 24-week) forgiveness period either on the date of loan disbursement or on the first day of the first pay period after the PPP loan is disbursed.





Additionally, payroll costs incurred but not paid during the borrower's last pay period of the forgiveness period, are eligible for forgiveness if paid on or before the next regular payment date after the forgiveness period ends. Otherwise, payroll costs must be paid during the eight-week (or 24-week) period.

The Paycheck Protection Program Flexibility Act of 2020 (PPPFA) was enacted on June 5, 2020, which included changes to various provisions of the PPP Program or provide more flexibility. One such change enables PPP borrowers to choose to extend the eight-week period to 24 weeks, if they so desire. New PPP borrowers will have a 24-week covered period as long as the covered period doesn't extend beyond December 31, 2020.

Also, the payroll expenditure dropped to 60% from 75% for purposes of the forgiveness. Partial forgiveness is available if less than 60% of the eligible funds are used for payroll costs.

Example: A borrower has a bi-weekly payroll schedule (every other week). The borrower chose to use the eight-week time period. The borrower's eight-week covered period begins on June 1 and ends on July 26. The first day of the borrower's first payroll cycle that starts in the covered period is June 7. The borrower may elect an alternative payroll covered period for payroll cost purposes that starts on June 7 and ends 55 days later (for a total of 56 days) on August 1. Payroll costs paid during this alternative payroll covered period are eligible for forgiveness. In addition, payroll costs incurred during this alternative payroll covered period are eligible for forgiveness if they are paid on or before the first regular payroll date occurring after August 1. Payroll costs that were both paid and incurred during the covered period (or alternative payroll covered period) may only be counted once.

**Will a borrower's PPP loan forgiveness amount be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?**

No. Employees whom the borrower offered to rehire are generally exempt from the loan forgiveness reduction calculation. This exemption is also available if a borrower previously reduced the hours of an employee and offered to restore the employee's hours at the same salary or wages. Specifically, in calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if:



- the borrower made a good faith, written offer to rehire such employee (or, if applicable, restore the reduced hours of such employee) during the covered period or the alternative payroll covered period;
- the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours;
- the offer was rejected by such employee;
- the borrower has maintained records documenting the offer and its rejection; and
- the borrower informed the applicable state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer.

### **What effect does a reduction in a borrower's number of full-time equivalent (FTE) employees have on the loan forgiveness amount?**

In general, a reduction in FTE employees during the covered period or the alternative payroll covered period reduces the loan forgiveness amount by the same percentage as the percentage reduction in FTE employees. The borrower must first select a reference period: (i) February 15, 2019 through June 30, 2019; (ii) January 1, 2020 through February 29, 2020; or (iii) in the case of a seasonal employer, either of the two preceding methods or a consecutive 12-week period between May 1, 2019 and September 15, 2019.

If the average number of FTE employees during the covered period or the alternative payroll covered period is less than during the reference period, the total eligible expenses available for forgiveness is reduced proportionally by the percentage reduction in FTE employees.

For example, if a borrower had 10.0 FTE employees during the reference period and this declined to 8.0 FTE employees during the covered period, the percentage of FTE employees declined by 20 percent and thus only 80 percent of otherwise eligible expenses are available for forgiveness.

### **Will a borrower's loan forgiveness amount be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction?**

No. When an employee of the borrower is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period, the borrower may exempt such employees from the calculation of the FTE



reduction penalty. However, borrowers must maintain records demonstrating that each such employee was fired for cause, voluntarily resigned, or voluntarily requested a schedule reduction.

### **What effect does a borrower's reduction in employees' salary or wages have on the loan forgiveness amount?**

A reduction in an employee's salary or wages in excess of 25 percent will generally result in a reduction in the loan forgiveness amount, unless an exception applies. Specifically, for each new employee in 2020 and each existing employee who was not paid more than the annualized equivalent of \$100,000 in any pay period in 2019, the borrower must reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25 percent of base salary or wages between January 1, 2020 and March 31, 2020 (the reference period), subject to exceptions for borrowers who restore reduced wages or salaries. This reduction calculation is performed on a per employee basis, not in the aggregate.

Example: A borrower reduced a full-time employee's weekly salary from \$1,000 per week during the reference period to \$700 per week during the covered period. The employee continued to work on a full-time basis during the covered period with an FTE of 1.0. In this case, the first \$250 (25 percent of \$1,000) is exempted from the reduction. Borrowers seeking forgiveness would list \$400 as the salary/hourly wage reduction for that employee (the extra \$50 weekly reduction multiplied by eight weeks).

### **How is the loan forgiveness amount impacted if there is a reduction in the number of FTEs and a corresponding salary reduction?**

To ensure that borrowers are not doubly penalized, the salary/wage reduction applies only to the portion of the decline in employee salary and wages that is not attributable to the FTE reduction.

Example: An hourly wage employee had been working 40 hours per week during the borrower selected reference period (FTE employee of 1.0) and the borrower reduced the employee's hours to 20 hours per week during the covered period (FTE employee of 0.5). There was no change to the employee's hourly wage during the covered period. Because the hourly wage did not change, the reduction in the employee's total wages is entirely attributable to the FTE employee reduction and the borrower is not required to conduct a salary/wage reduction calculation for that employee.



### **Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?**

Yes, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation can be no more than the lesser of 8/52 of 2019 compensation (i.e., approximately 15.38 percent of 2019 compensation) or \$15,385 per individual in total across all businesses.

In particular, owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf. Schedule C filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit. General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, as such expenses are paid out of their net self-employment income.

### **When must nonpayroll costs be incurred and/or paid to be eligible for forgiveness?**

A nonpayroll cost is eligible for forgiveness if it was:

- paid during the covered period; or
- incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.

### **Are advance payments of interest on mortgage obligations eligible for loan forgiveness?**

No. Advance payments of interest on a covered mortgage obligation are not eligible for loan forgiveness because the CARES Act's loan forgiveness provisions regarding mortgage obligations specifically exclude "prepayments." Principal on mortgage obligations is not eligible for forgiveness under any circumstances.



## Loan Forgiveness Application

To receive loan forgiveness, you must apply to the lender servicing your loan with documentation (it is not automatic):

- Verifying FTEEs on payroll and their pay rates (IRS payroll tax filings and state income, payroll, and unemployment filings);
- Providing evidence of covered costs/payments (e.g., canceled checks, receipts, or other documents verifying mortgage, rent, and utility payments); and
- Certifying (by an authorized business representative) that the documentation is true and correct and that forgiveness amounts requested were used to retain employees and make other forgiveness-eligible payments.

For loan amounts remaining after the forgiveness determination, it appears that the same loan terms continue to apply (e.g., 1% interest rate, federally guaranteed, two-year maturity, etc.), but future SBA guidance on the forgiveness provisions may elaborate more on this topic.

## OTHER LOAN PROGRAMS

**I took out a bridge loan through my state, am I eligible to apply for the Paycheck Protection Program?**

Yes, you can take out a state bridge loan and are still be eligible for the PPP loan.

**If I have applied for, or received an Economic Injury Disaster Loan (EIDL) related to COVID19 before the Paycheck Protection Program became available, will I be able to refinance into a PPP loan?**

Yes. If you received an EIDL loan related to COVID-19 between January 31, 2020 and April 3, 2020, you would be able to refinance the EIDL into the PPP. However, you may not take out an EIDL and a PPP for the same purposes. Remaining portions of the EIDL, for purposes other than those laid out in loan forgiveness terms for a PPP loan, would remain a loan. If you took advantage of an emergency EIDL advance of up to \$10,000, that amount would be subtracted from the amount forgiven under PPP.



### **Are there other considerations I should evaluate before I apply for a PPP?**

An employer that receives a PPP is not eligible for the employee retention credit in section 2301 of the law, which provides eligible employers a refundable credit against payroll tax (Social Security and Railroad Retirement) liability equal to 50% of the first \$10,000 in wages per employee (including value of health plan benefits). Eligible employers must have carried on a trade or business during 2020 and be experiencing either: at least a partial suspension of operations due to government orders (e.g., limiting commerce, travel, group meetings, etc.); or a year-over-year gross receipts reduction of at least 50%.

### **Is an employer that repays its PPP loan by the safe harbor deadline (May 18, 2020) eligible for the Employee Retention Credit?**

Yes. An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 18, 2020) will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an eligible employer for purposes of the credit.

Businesses will have to compare the benefits of PPPs and these tax credits to determine which path provides the greater financial benefit (e.g., compare immediate liquidity needs with longer-term time value of money calculations).

## **MISCELLANEOUS QUESTIONS**

**I own a company that had to lay-off or furlough some employees. Some of my employees have applied for unemployment and will receive more than what I can pay them for them to return, can I hire other employees and still receive the maximum loan forgiveness?**

Your ability to qualify for the maximum loan forgiveness amount is not tied to rehiring a certain employee; instead, it is tied to the number of FTEs during the 8-week period as compared to pre-crisis. We are expecting more information on the forgiveness program.



**Do we calculate maximum loan as compensation up to \$100,000 PLUS other items like benefits? Or do benefits count against the cap?**

The \$100,000 cap is tied to cash compensation only. Payments for group health benefits are in addition to compensation when calculating payroll costs.

**My husband and I own a small company. We have no employees. Our business is an S Corp. We have no payroll. Do our net earnings qualify as payroll costs?**

Sole proprietors, independent consultants and self-employed individuals will use income such as wage, commission, income, net earnings from self-employment or similar compensation to determine payroll costs, capped at \$100,000 of compensation. You may then add health insurance premium costs and other “payroll costs” to that amount.

**Can we use PPP to cover our operating expenses, rent, and utilities?**

In addition to payroll, you can use the proceeds to fund interest on mortgage or other debt obligations, rent, and utilities. It appears that you may use the funds for other operating expenses; however, funds used for operating expenses (other than mortgage interest, rent or utilities) will not be eligible for loan forgiveness.

**Is the compensation paid to the owner of a small business eligible for forgiveness as well?**

We expect to have more guidance on the loan forgiveness provisions. At this time, it appears that if the funds are used for wages, commissions, income, net earnings from self-employment or similar compensation, the funds will be eligible for forgiveness (assuming other conditions for forgiveness are met).

**We own and operate several gas stations. I know there's 500 employee limits, but we're a franchise with multiple location. Is there a way I can qualify?**

A business that is operating as a franchise that is assigned a franchise identifier code by the SBA is exempt from the affiliation rules, which means only the employees of the applicant count, NOT the employees of any affiliates. Check [here](#) to see if your franchise is listed in the SBA Franchise Directory.



**Can I include payments made in 2019 to a Subcontractor to calculate the maximum loan amount?**

No. Independent contractors may apply for a PPP loan on their own, so they do not count for purposes of a borrower's PPP loan calculation.

**Our business was closed due to shelter in place orders, so our hourly workers have been put on leave without pay. How many hours are we supposed to pay them to meet the forgiveness threshold?**

That will depend on whether you can count the hours for which you choose to pay them (even if they are not working) in the FTEE calculation. The maximum forgiveness amount will be reduced proportionately for reductions in FTEEs between pre-crisis levels and the 8-week forgiveness period. You also will have forgiveness amounts reduced if you cut wages (compared to the prior completed quarter of employment) by more than 25% for employees make less than \$100,000 per year.

If we assume the same FTEE calculation is the same one used under the ACA, it will include two steps:

- Step 1: Calculate the aggregate hours of service in a month for employees (do not include more than 120 hours of service for any employee.)
- Step 2: Divide the total hours of service from Step 1 by 120.

The result is the number of full-time-equivalent employees for the month. We hope to have more guidance on the calculation of FTEEs and loan forgiveness soon.

**If we are using our 2019 payroll costs and we have employees that either resigned or quit, how does that impact us?**

The maximum amount of your PPP loan that is eligible for forgiveness will depend on whether you used the funds solely for eligible expenses (including whether 60% of the funds were used for payroll expenses). If you received a loan in an amount that was greater than you required for payroll, you may fail to meet the required parameters for the maximum loan forgiveness. In addition, the maximum forgiveness amount will be reduced for reductions in FTEEs or significant wage cuts for lower-paid employees as compared to pre-crisis levels.





### **Is there any help for landlords collecting rent?**

If you are a landlord, the PPP program may not be the loan program you are looking for as the majority of funds received must be used for payroll costs. Instead, you may qualify for the SBA [Disaster Loan \(EIDL\) program](#) tied to COVID-19. Under this program, if eligible, you may borrow up to \$2 million, with favorable interest rates and loan terms. The funds may be used for bills that could have been paid had the disaster not occurred. Owners of rental properties may apply.

### **Regarding the need certification: we have cash currently to cover payroll, but we are concerned about what the future holds. May future concerns qualify for this certification?**

The PPP Application requires you to certify that the loan is needed to “support ongoing operations” during the COVID-19 emergency. We cannot advise on your ability to certify to this fact. We recommend that you speak to your lender and provide evidence of why your concern is valid (i.e., based on current data or projections that indicate significant concerns).

### **We have a small business (just me and my husband). Does this program cover health benefits?**

Sole proprietors, independent consultants and self-employed individuals may use the PPP loan funds for payroll (i.e., wages), which may include health insurance premiums paid by the business.

### **Is there any financial support we have access to in order to pay our operating expenses?**

You may qualify for the SBA [Disaster Loan \(EIDL\) program](#) tied to COVID-19. Under this program, if eligible, you may borrow up to \$2 million, with favorable interest rates and loan terms. Loan funds may be used for: fixed debts (rent, etc.); payroll; accounts payable; and operating expenses that could have been met had the disaster not occurred.

### **What if we receive the EIDL advance of \$10,000? Will the bank refinance that into the PPP or will it impact the PPP?**

If you got an EIDL loan between January 31, 2020 and April 3, 2020, and you subsequently qualify for the PPP loan, you can re-finance the EIDL loan with the PPP loan, and you would add the outstanding EIDL loan amount to the payroll sum when calculating the PPP loan amount. Otherwise, you may have an EIDL and a PPP loan at the same time, but they may not be for the same purposes.



**Can the loan money be used for payroll when the employees come back to work as they are currently on unemployment?**

You will need to consider timing in order to receive the maximum loan forgiveness, which is affected by a reduction in FTEE (see above under loan forgiveness). You may still receive the maximum loan forgiveness by rehiring employees prior to June 30, 2020 (and waiting until they are rehired to submit your Loan Forgiveness application).

**Are 501(c)(4) or 501(c)(5) companies eligible for the PPP Loan?**

No. Only 501(c)(3)s and 501(c)(19)s are eligible, in addition to faith-based organizations.