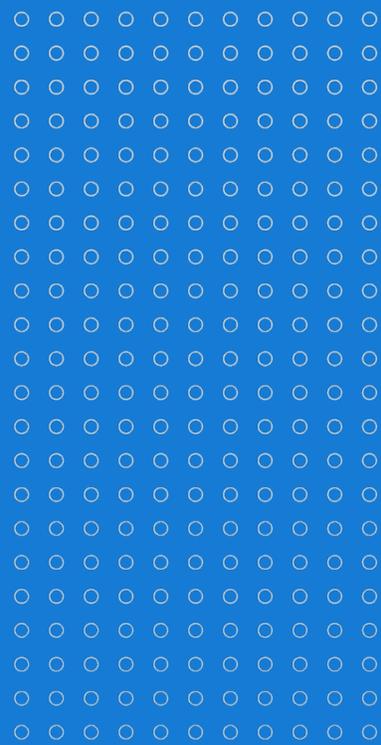


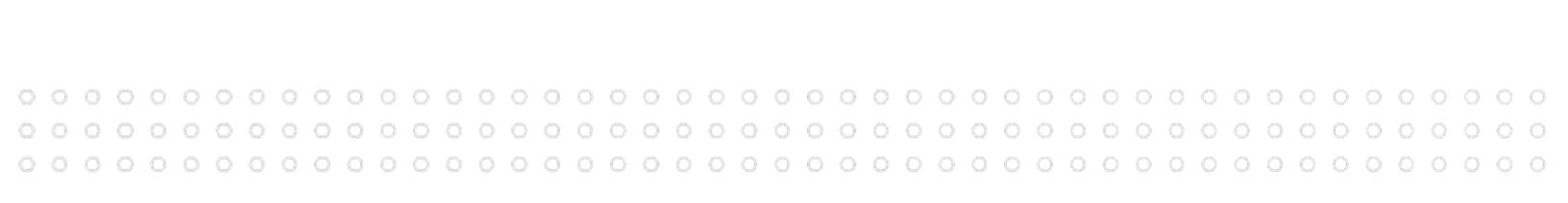
Frequently Asked Questions

Paycheck Protection Program (PPP)



April 11, 2020





The Paycheck Protection Program (“PPP”) is a key program under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act” or the “Act”) signed into law by President Trump on March 27, 2020. Through the PPP, which contains nearly \$350 billion of funding for small businesses, eligible businesses can access fully guaranteed loans of up to \$10 million in order to cover payroll costs and other specified operating costs over the course of an eight-week period beginning on the day the loan is originated. PPP is meant to incentivize small businesses to maintain their payrolls as the COVID-19 pandemic continues to unfold.

Below are some Frequently Asked Questions (“FAQs”) related to the PPP. Information regarding the PPP loan program continues to change. We are monitoring all changes closely and will update these FAQs as appropriate. We recommend that all small businesses apply as soon as possible since funds are distributed on a first come, first served basis.

Eligibility and General Information

Who is eligible for a PPP loan?

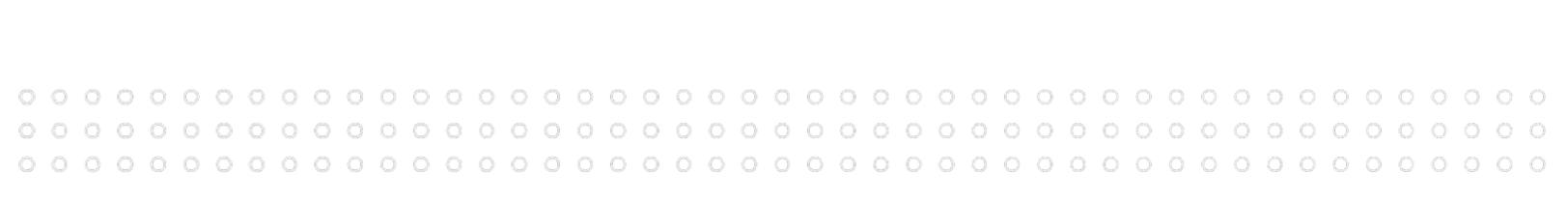
Any business is eligible for a PPP loan if its principal place of business is in the United States, it was operational as of February 15, 2020¹ and it meets the requirements of one of the following categories:

- The business qualifies as a “small business concern”;
- Any business with 500 or fewer employees. This includes 501(c)(3) non-profit organizations, 501(c)(19) veterans organization and Tribal business concerns;
- Any business that meets the SBA employee-based size standards for the industry in which it operates (if applicable). This includes 501(c)(3) non-profit organizations, 501(c)(19) veterans organization and Tribal business concerns;
- A business that is assigned a North American Industry Classification System (“NAICS”) code beginning with 72 (Accommodation and Food Services) that employs 500 or fewer employees per each physical location; or
- An individual who is a sole proprietor, independent contractor or self-employed.

A business should also review the SBA’s affiliation rules to determine whether related organizations impact eligibility. However, businesses that have been assigned a NAICS code beginning with 72 are exempt from the affiliation rules.²

¹ Seasonal businesses are also eligible.

² Affiliates generally include entities controlling, controlled by, or under common control with the business. The concept of “control” in this context is fact-dependent. Generally, ownership of 50% or more of the voting securities of an entity will constitute control; however control may be established by other means (including certain minority blocking rights). The private equity and venture capital industries are hoping for regulatory guidance from the SBA, relaxing the affiliation rules for PPP loans; however, no such guidance has yet been provided.



You are NOT eligible for a PPP loan if any of the following apply:

- A business, or any of its owners, are presently (1) involved in any bankruptcy, a debarment or proposed debarment or (2) suspended, declared ineligible or voluntarily excluded from participation in the PPP by any Federal department or agency;
- A business or any of its owners (or any business owned or controlled by any of them) has caused a loss to the government through a direct or guaranteed loan from the SBA (or any other Federal Agency) that is (1) currently delinquent or (2) has defaulted in the last seven years.
- An individual applicant or owner of a business with 20% of more equity ownership is (1) subject to formal criminal proceedings, such as indictment, criminal information, arraignment, or other means by which formal criminal charges are brought, or presently incarcerated, on probation or on parole or (2) has, within the last five years, been convicted, pleaded guilty, pleaded nolo contendere, been placed on pretrial diversion for any felony, or been placed on any form of parole or probation (including probation before judgment);
- An applicant is a non-U.S. Citizen or lawful permanent resident; or
- An applicant is an individual who employs household employees such as nannies or housekeepers.

What is a “small business concern”?

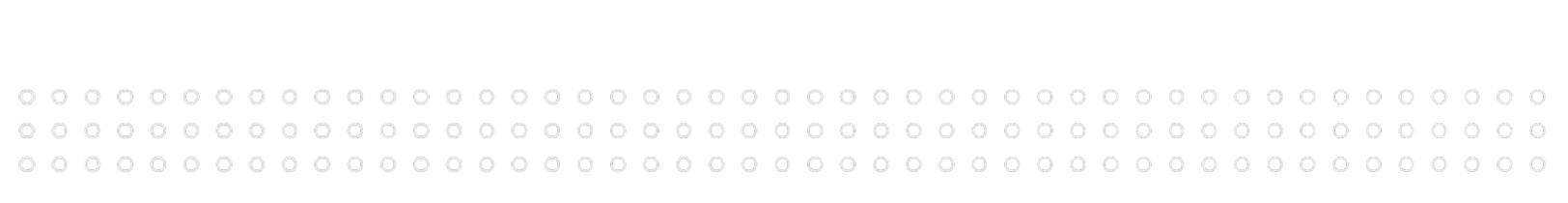
Under the SBA regulations a “small business concern” is measured by a business’s annual receipts or number of employees. The SBA uses a table of size standards organized by industry-specific NAICS codes. Businesses should refer to their industry size standard measure included on the table of size standards based on their NAICS code, available at www.sba.gov/size.

A business can also qualify as a small business concern if it satisfies the alternative size standard measure.

(a) How do you calculate business size based on annual receipts?

Generally, annual receipts include all revenue received or accrued by a business in any form. These receipts should show the total of all sales of products or services, interest collected, dividends, rents, royalties, fees or commission received as well as any costs incurred by the business.

The calculation for annual receipts depends on how long the business has been operating. For businesses that have been operating for three or more completed fiscal years, annual receipts are the total receipts of the business over its most recently completed three fiscal years divided by three. For businesses that have been operating for less than three completed fiscal years, annual receipts are the total receipts for the period the business has been in operation divided by the number of weeks the business has been in operation, multiplied by 52.



(b) How do you calculate business size based on number of employees?

The number of employees is determined by taking the average number of employees — including full-time, part-time, temporary, leased and affiliated employees — per pay period for the 12 months prior to making the size determination or from calendar year 2019. If the business has not been open for 12 months, it can use the average number of employees for each of the pay periods during which it has been open.

Seasonal businesses may elect to instead use the average number of employees for the time period between February 15, 2019 and June 30, 2019. New businesses can calculate employee headcounts using the time period from January 1, 2020 to February 29, 2020.

(c) How do you satisfy the alternative size standard?

A business must satisfy both prongs of the alternative size standard has a two-part test:

- 1) the 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.

How can a business determine whether it has any affiliates?

The SBA's recent guidance and interim final rule clarified that 13 C.F.R. section 121.301 is the applicable rule with respect to affiliation. The central element in determining affiliation is "control." Pursuant to Section 121.301(f), "[c]oncerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists."

The SBA's recent guidance on affiliation ([LINK](#)) clarified that there are four tests for affiliation based on control to apply to participants in the PPP: (1) affiliation based on ownership, (2) affiliation arising under stock options, convertible securities, and agreements to merge, (3) affiliation based on common management, and (4) affiliation based on identity of interest. Determining whether there is an affiliation is a complex, fact-specific analysis in which the SBA will look at the "totality of the circumstances."

With respect to private equity portfolio companies and venture capital-backed entities, affiliation will most likely be found where there is majority ownership or management control. However, the structure of private equity and venture capital platforms is complex and requires a thoughtful analysis of any relevant rights to control, such as through equity ownership, the right to appoint board members, and voting rights. In general, the SBA will deem that a minority shareholder controls the business where the shareholder has a contractual right to block an action by the board of directors or shareholders or to prevent a quorum. If, however, the minority shareholder irrevocably gives up such rights the SBA would no longer find an affiliation based (assuming no other affiliation test is triggered).



Will my business size be verified by the Lender?

No. It is the responsibility of the business to determine the accuracy of its business size. Lenders are permitted to rely on a business's certifications and are not required to independently verify the business's size.

What does it mean to be “operational” as of February 15, 2020?

A business is operational if it paid employee salaries and payroll taxes or paid independent contractors as reported on a Form 1099-MISC.

Who is considered an employee?

Employees include any individual working on a full-time, part-time or temporary basis.

Are independent contractors included in determining employee count?

No. Independent contractors are not considered employees for this purpose. Independent contractors may apply on their own for a loan under the PPP.

What if the business is paying employee salaries but only providing limited services?

Businesses are still eligible for loan forgiveness even if they are providing limited services. There is no requirement that a business maintain full services or set hours of operation in order to be eligible for forgiveness.

How can a business use the proceeds of a PPP loan?

Under the program rules, businesses can use loan proceeds for the following items:

- Payroll costs, including employee benefits.
- Interest on mortgage obligations, incurred before February 15, 2020.
- Rent payments, under lease agreements in force before February 15, 2020.
- Utility payments, for which service began before February 15, 2020.

What is the interest rate on a PPP loan?

The interest rate is fixed at 1 percent.

When do payments start?

All payments are deferred for six months. Interest will continue to accrue over this period. Businesses must repay the loan within two years from the date of distribution

Note that businesses may be entitled to forgiveness of some or all of the loan proceeds. Please refer to the FAQs concerning loan forgiveness for additional details.



Can a business pay back the loan early?

Yes. A business may repay a loan early without incurring prepayment penalties or fees.

Does a business need to pledge any collateral or personally guarantee the loan?

No. PPP loans do not require a collateral pledge or personal guarantee.

What is the difference between a loan under the PPP and the SBA Economic Injury Disaster Loan (EIDL)?

The EIDL is a loan in the amount of economic injury suffered by the business as a result of the COVID-19 pandemic, capped at \$2 million. An EIDL loan is not forgivable. When applying for an EIDL, a business may request an advance against the loan, not to exceed \$10,000.

The SBA will make its determination of eligibility for such an advance within three days after receipt of a completed application. The business does not have to repay the advance, even if the EIDL loan is ultimately denied. The “small business” eligibility requirements of a PPP loan and an EIDL loan are similar, but not identical. A business may apply for both; however, the funds from both loan programs cannot be used for the same purpose.

Applying for a PPP Loan

When did the application process begin?

The application process for small businesses and sole proprietors began on April 3, 2020. The application process for independent contractors and self-employed individuals begins on April 10, 2020. Loans are being distributed on a first come, first served basis.

When does the application period close?

The application period closes on June 30, 2020.

Where can businesses apply for a PPP loan?

Businesses can apply through any participating SBA 7(a) lender, bank, or credit union. The SBA website includes information about banks in your area that are accepting PPP applications. Businesses are advised to check with their primary bank to determine whether that bank can process the loan application.

What if additional guidance becomes available after a business applies for a PPP loan?

Businesses that already applied for a PPP loan may rely on the laws, rules and guidance provided as of the date of application. If the SBA subsequently releases new guidance and the application has not been processed, a business may elect to supplement its application submission.



PPP Loan Application Requirements

Is there a PPP loan application?

Yes. The standard application is SBA Form 2483 Paycheck Protection Program Application Form (“SBA Form Application”). Certain individual lenders may also provide their own application forms, which may be based on SBA Form Application. Businesses should work with their lenders to ensure they complete the appropriate document.

Can a business apply through the SBA website?

No. While a business can find helpful information about the PPP on the SBA’s website, it must apply for a PPP loan through an approved lender.

Who must complete the SBA Form Application?

An authorized business representative may complete the SBA Form Application on behalf of the business. An E-signature or E-consent is allowed.

The SBA Form Application requires identification of all owners of the business having 20% or more of the equity of the business.

Who is considered an owner?

Owners are identified on page 3 of the SBA Form Application as (1) sole proprietors, (2) all general partners and limited partners owning 20% or more of the equity of the business, (3) all owners with 20% or more ownership of a corporation, (4) all members owning 20% or more of a limited liability company, and (5) any Trustor (if the business is owned by a trust).

What documentation must a business provide with an application?

In general, a business must provide payroll documentation, such as payroll processing records and payroll tax filings. Independent contractors should submit 1099 documentation while sole proprietors should submit income and expense information. Businesses may also be required to submit a separate statement about affiliated businesses in response to Question 3 on the SBA Form Application.

What if a business or sole proprietor does not have payroll documentation?

If a business, independent contractor, sole proprietor or self-employed individual does not have payroll documents, they should submit documentation, such as bank records, showing relevant income amounts.

How much can a business borrow under a PPP loan?

A business can borrow 2.5 times its average monthly payroll, up to a cap of \$10 million. If it has an outstanding loan under the SBA’s disaster loan program that was made between January 31, 2020 and the date of application, it can refinance that loan and add it to the PPP loan amount.



How do businesses calculate average monthly payroll?

Businesses must calculate the average monthly payroll as follows:

1. Aggregate payroll costs from the last 12 months³ (i.e., from the date on which the loan is made) or the average monthly payroll from calendar year 2019.
2. Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.
3. Calculate average monthly payroll costs (divide the amount from step 2 by 12).

Seasonal businesses may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019. New businesses may calculate payroll costs using the time period from January 1, 2020 to February 29, 2020. All compensation costs over \$100,000 are excluded on an annualized basis for each employee.

What qualifies as payroll cost?

Payroll costs include:

- Compensation paid to employees that includes salary, wages, or other cash compensation such as bonuses, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);
- Employee benefits, including costs for vacation, parental, family, medical, or sick leave;
- Allowance for separation or dismissal;
- Payments required for the provision of group health care benefits, including insurance premiums;
- Payment of any retirement benefit; and
- State and local taxes assessed on compensation.

For a sole proprietor or independent contractor, payroll costs include wages, commissions, income, or net earnings from self-employment, capped at \$100,000 annually for each employee.

What does NOT qualify as a payroll cost?

Payroll costs do not include:

- Cash compensation amounts paid to an employee in excess of annual salary of \$100,000, prorated as necessary;

³ Although the SBA Form Application states that payroll is calculated using the average monthly payroll for 2019, guidance provides that monthly payroll may also be calculated using the average payroll costs from the prior 12 months.

- Federal income taxes⁴;
- Compensation paid to non-U.S. employees; and
- Qualified sick and family leave wages for which a business receives a credit under sections 7001 and 7003 of the Families First Coronavirus Response Act (FFCRA) (excluded because employers will receive a tax credit for those wages).

Can I use records from a third-party payroll provider?

Yes. A business may use the payroll documentation provided by a payroll provider to show the amount of wages and payroll taxes reported to the IRS on behalf of the business for purposes of applying for the PPP loan. This may include, but is not limited to, information from forms such as the Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, or Employer's Quarterly Federal Tax Return. If these forms are not available, a business may provide a statement from the payroll provider documenting the amount in wages and payroll taxes.

Who must provide a good faith certification on the SBA Form Application?

The SBA Form Application contains a series of certifications and authorizations on page 2. It also requires individuals and certain business owners to make certifications on the first page concerning criminal background. **Each business should read those items carefully prior to signing.**

Note that individual banks may have their own application forms. Upon review, some forms contain required certifications that are broader (including, for example, certifications on the number of employees of business and its affiliated companies).

Loan Forgiveness Under the PPP

Can a PPP loan be forgiven?

Yes. PPP loans are eligible for forgiveness up to the full principal amount. As described below, the amount of loan forgiveness depends on how a business uses the loan proceeds and whether or not it maintains its levels of employment and compensation.

What is the Covered Period?

The Covered Period is the eight-week period beginning on the date of loan distribution.

What is the Reference Period?

The Reference Period is either February 15, 2019 through June 30, 2019 or January 1, 2020 through February 29, 2020. A business may elect which Reference Period to use.

⁴ Federal taxes that are excluded from payroll costs are the employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees.



How does a business determine the amount of forgiveness for its PPP loan?

The amount of PPP loan forgiveness is based on certain expenses incurred and paid during the Covered Period subject to the limitations described below. Those expenses are: (1) payroll costs; (2) interest payments on mortgage obligations that are incurred before February 15, 2020; (3) rent payments under leases in force before February 15, 2020; and (4) utility payments for services beginning prior to February 15, 2020.

What are the limitations on PPP loan forgiveness?

The loan must be repaid to the extent that eligible expenses (i.e., payroll costs, mortgage interest payments, rent payments, and utility payments) over the Covered Period are less than the amount of the loan. Not more than 25% of the forgiveness amount may be attributable to non-payroll costs. The forgiveness amount will also be reduced if the business fails to hire back employees it furloughed or reduces employee salaries.

How do payroll reductions affect PPP loan forgiveness?

The total amount of the loan eligible for forgiveness is reduced by (i) the average number of full-time equivalent employees (“FTEs”) per month employed during the Covered Period, divided by (ii) the average number of FTEs per month employed during the Reference Period. A business may elect which Reference Period to use. For example, if a business has an average of 75 FTE employees during the Covered Period and an average of 100 FTE employees during the Reference Period, the business would only be entitled to loan forgiveness of up to 75% of the total loan amount.

Can rehiring employees minimize a forgiveness reduction?

Yes. If a business reduces the number of FTEs between February 15, 2020 and April 27, 2020 (30 days after the enactment of the CARES Act), a business may rehire the same number of FTEs no later than June 30, 2020 in order to avoid a reduction to the amount of loan forgiveness. For purposes of loan forgiveness, a business can determine how many FTEs to hire back by calculating the average number of FTEs during the Reference Period.

How do reductions in employee compensation affect PPP loan forgiveness?

The amount forgiven will be reduced by the amount of any reduction in an employee’s total salary or wages during the Covered Period greater than 25% of the total salary or wages paid to the employee during the most recent full quarter in which the employee was employed prior to the Covered Period.

Can restoring employee salaries to the appropriate level minimize a forgiveness Reduction?

Yes. If a business has to reduce the salary or wages of employees between February 15, 2020 and April 27, 2020, and the business restores the employees’ compensation to the pre-February 15, 2020 level before June 30, 2020, the business may avoid a reduction in the amount of loan forgiveness. If the business does not restore employee salary or wages, the loan forgiveness amount will be reduced proportionately.



Do businesses have to rehire all employees that were furloughed?

No. A business does not need rehire all of the employees that were furloughed; however, the amount of loan forgiveness will be reduced proportionately.

Are businesses allowed to refuse to rehire an employee that was fired or laid off permanently?

Yes. There is no requirement that a business hire back the same employees originally furloughed. To be eligible for full forgiveness of the loan, prior to June 30, 2020, a business must rehire the same number of employees it furloughed between February 15, 2020 and April 27, 2020. A business could choose to hire a different employee and still be eligible for loan forgiveness so long as the same level of employment is maintained.

If employees elect not to work, but are not terminated, will that affect loan forgiveness?

No. A business is still eligible for loan forgiveness as long as employees receive their wages.

If a part-time employee needs to be terminated, will that affect forgiveness?

Yes. Forgiveness is reduced based on termination or furlough of both part-time and full-time employees. Reductions in loan forgiveness will occur if a business furloughs either type of employee during the Covered Period.

Under the PPP can new employees be hired to keep FTE numbers up?

Yes. A business is under no obligation to hire the same employees.

How are tipped employees accounted for with respect to loan forgiveness?

Additional wages paid to a business's employees that typically receive tips count towards forgiveness.

How do businesses apply for loan forgiveness?

To apply for loan forgiveness, businesses need to submit a forgiveness application to the lender that issued the PPP loan along with documentation that proves that the business used the loan for permitted costs and maintained the required level of employment and compensation.

Currently, there is not a formal application process relating to loan forgiveness. Details concerning this process are still developing as the SBA continues to issue clarifying guidance.

What do businesses need to submit to apply for PPP loan forgiveness?

Although we expect additional guidance to be issued, the current understanding is that a request for forgiveness must include:

- Documentation, including payroll filings, verifying the number of FTEs currently employed and that were employed during the relevant Reference Period and Covered Period, and the compensation that those employees received.

- Documentation, including cancelled checks, payment receipts, transcript of accounts, etc., verifying payments of mortgage interest, rent costs, and utility costs.
- A certification representing that the documentation is true and correct and that the amount of forgiveness requested was used for retaining employees and paying mortgage interest, rent costs, and utility costs during the Covered Period.
- Any additional information that the SBA Administrator may require.

When does a business find out if its loan is forgiven?

The lender will issue a decision on loan forgiveness within 60 days of receiving the loan forgiveness request.

Does forgiveness under the PPP affect eligibility for other programs?

Yes. A business that receives a PPP loan is ineligible for receipt of the employee retention credit under the CARES Act. In addition, if the PPP loan is forgiven, a business will not be eligible for deferral of payroll taxes under the CARES Act.

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