

Payroll Protection Program (PPP) loans

CARES Act passed on March 27, 2020



HENDERSON
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PPP Loan Eligibility

- The 500 employee threshold (or SBA industry size standard, some SBA classifications are based on revenue) includes all employees whether they be full-time, part-time, or any other status (and all foreign employees).
- NOT the same as the FFCRA count of 500 employees.
- Additionally, the determination of a business concern's number of employees is subject to the affiliation rules under Section 121.0103, Title 13, Code of Federal Regulations.
 - Economic control, voting control, and/or management control.
 - private Equity majority ownership will create a roll-up/aggregation count.
- Foreign-owned businesses can still be eligible if the legal entity is registered in the U.S. (foreign-owner compensation is excluded for loan principal and forgiveness).
- There are exceptions for restaurants, hospitality, franchisees, and others.
- A good faith certification to use the loan proceeds to retain employees.

Good Faith Certification

- Lenders will ask for a good faith certification that:
- The uncertainty of economic conditions makes the loan necessary;
- The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments.
- Borrower does not have a duplicative application for a loan for the purpose and amounts applied for under PPP.
- From February 15, 2020 to December 31, 2020, the borrower has not received a duplicative loan under the PPP.

PPP Provisions You Need to Know

- There is NO unavailability of “credit elsewhere” required, as per other SBA loans.
- Borrowers can borrow 2.5 times their monthly payroll expenses during the last tax year you filed (2018 or 2019), capped at \$10 million.
- Applicable uses for the loan proceeds include: (1) qualified payroll costs* (caps for those earning over \$100k in salary); (2) rent; (3) utilities; (4) certain insurance premiums (not all P&C insurance policies) and health plan costs; and (5) interest on mortgages / similar facilities.
 - In other words, what’s spent on your employees for comp, benefits, and work space.
- Payments of principal, interest, and fees will be deferred for at least 6 months, but not more than 1 year. (Treasury Dept. indicates automatic deferral is the default).
- . . . Continued on next slide

PPP Provisions You Need to Know

- ...
- Interest rates are capped at 4.0%. (Treasury Dept is indicating 0.5% interest rates). The SBA will not collect any annual fees or guarantee fees for the loan, and all prepayment penalties are waived.
- 100% of the loans are federally-backed.
- The SBA has no recourse against any borrower for non-payment of the loan, except where the borrower has used the loan proceeds for a non-allowable purpose. Generally, no Personal Guaranty.
- The SBA will delegate the loan making authority under the CARES Act to private banks.
- ... Next slide continues on Forgiveness provisions.

PPP Provisions You Need to know (Loan Forgiveness)

- ...
- Loan forgiveness is available for the full principal amount of the loan.
- BUT...
- The Maximum Forgiveness Amount is the SUM of the Expenses incurred and paid WITHIN THE EIGHT (8) WEEKS OF YOUR LOAN ORIGINATION.
- Current Treasury Regs indicate 75% of the Loan Principal must be spent on Payroll Costs.
- Some may strategize to only apply for a principal amount equal to this EIGHT WEEK figure to equate their economic needs with the max forgiveness figure.
- The amount of loan forgiveness will be reduced if the employer reduces its number of employees, as compared to the same months of the prior year, or if the employer reduces the employees' pay by greater than 25%, compared to the same months of the prior year.
- Long-term Payroll Commitment? There does not appear to be any long-term payroll maintenance requirement beyond the application period up to June 30, 2020.

Unpacking Those Significant PPP Provisions

- The spirit of the Act is to keep people employed.
- Loan principal amounts are inextricably linked to your organization's monthly payrolls.
- Qualified Expenses include other “people-related” overhead.
- Loan forgiveness amounts are inextricably linked to a comparison of your organization's monthly payrolls over the last 12 months.
- No recourse or personal guaranty.

Loans can be viewed as direct relief and/or as a debt deferral and consolidation option.

Application Process - Delegation

The CARES Act includes a specific provision, which is self-executing, for the SBA to delegate the loan-making authority under Section 7(a) of the Small Business Act to most/nearly all federal banking institutions:

- Current SBA-approved banks,
- All other FDIC banks,
- All federal farm loan banks and federal credit unions.

Recommend you speak to your commercial bank immediately to inquire about its SBA-approved status and start the application process.

Your Lender likely has a supplemental application or a worksheet.

The SBA's application is 4 pages with questions and owner certifications

Paycheck Protection Program Borrower Application Form

OMB Control No.: 3245-0407
Expiration Date: 09/30/2020

Check One:

- Sole proprietor
- Partnership
- C-Corp
- S-Corp
- LLC
- Independent contractor
- Eligible self-employed individual
- 501(c)(3) nonprofit
- 501(c)(19) veterans organization
- Tribal business (sec. 31(b)(2)(C) of Small Business Act)
- Other

DBA or Tradename if Applicable

Business Legal Name

Business Address

Business TIN (EIN, SSN)

Business Phone

Primary Contact

Email Address

Average Monthly Payroll: \$ _____

x 2.5 + EIDL, Net of Advance (if Applicable) Equals Loan Request: \$ _____

Number of Employees: _____

Purpose of the loan (select more than one):

- Payroll
- Lease / Mortgage Interest
- Utilities
- Other (explain): _____

Applicant Ownership

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

If questions (1) or (2) below are answered "Yes," the loan will not be approved.

Question	Yes	No

Application Process – Underwriting Materials

- Worth noting that this application process is much less comprehensive than “traditional” SBA loans (designed to get the funds out in the economy quickly).
- What you need to get started (may vary depending on your bank):
 - Corporate governance documents (articles of incorporation/organization, other state filings, By-Laws or Operating Agreement);
 - List of all owners with equal to or greater than 20% ownership;
 - List of any other entities with common ownership;
 - Citizenship status of owners;
 - IRS Quarterly 940, 941, or 944 payroll tax reports;
 - Last 12 months of Payroll Reports from date of loan application;
 - Gross wages, Paid Time Off/Vacation Pay, Sick Leave Pay;
 - State and local taxes paid on employee compensation;
 - Documentation related to health insurance premiums paid;
 - Documentation related to retirement plan funding.

Applying for Loan Forgiveness is a Separate Process (to be handled after June 30, 2020)

To receive loan forgiveness, Borrowers must apply to their Lender with documentation:

- Verifying full-time equivalent employees on payroll and their pay rates;
- Regarding covered costs/payments for mortgage, rent, utilities, etc.;
- Certifying that the documentation is true and correct, most importantly affirming the prior loan application good faith certification that the loan proceeds were used primarily to retain employees.

What You Should Be Doing Now if You Are Interested in Obtaining a PPP Loan

- Contacting your “favorite” federal financial institutions;
- Gathering the necessary underwriting materials;
- Completing the Treasury Dept.’s application, or better yet, your favorite bank’s application;
- Forecasting your employment needs versus cash flow demands and estimating possible forgiveness outcomes;
- Time is of the essence.

Coordination with Other CARES Act Tax Credits

NO EMPLOYEE RETENTION CREDIT FOR PPL RECIPIENTS

- The employee retention credit 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 reduction in gross receipts of at least 50%.
- For employers with more than 100 full-time employees, only employees who are currently not providing services for the employer due to COVID-19 causes are eligible for the credit.

NO EMPLOYMENT TAX DEFERRAL FOR RECIPIENTS OF PPP FORGIVENESS

- Employment tax deferral relief under the CARES Act postpones the due date for depositing employer payroll taxes and certain self-employment taxes attributable to wages paid during 2020. The deferred taxes would be payable over the next two years—half due December 31, 2021 and half due December 31, 2022.

BUSINESSES WILL HAVE TO COMPARE THE BENEFITS OF PPP LOANS AND THESE TAX CREDITS/DEFERRALS TO DETERMINE WHICH PATH PROVIDES THE GREATER FINANCIAL BENEFIT.

What's Next?

April 3, 2020

PPP Loans available for small businesses – Wave 1.

April 10, 2020

PPP Loans available for independent contractors and self-employed individuals.

April 26, 2020

SBA's deadline to issue specific guidance on the loan payment deferment and loan forgiveness provisions. (there is a possibility that the loan forgiveness details could change/become more nuanced, after you apply for the loan. Remember, the loan forgiveness portion is Step 2 and will come after June 30, 2020).

Thank you.

