CENTER FOR NONPROFIT EXCELLENCE

Q&As FOR POTENITAL BORROWERS UNDER THE NEW PAYCHECK PROTECTION PROGRAM

On April 2, 2020, the Small Business Administration published a 31-page Interim Final Rule to explain the Paycheck Protection Program (PPP) authorized under the CARES Act. Pages 5-19 of that rule contain helpful questions and answers for borrowers; the next eight pages contain Q&A for lenders, and the remaining pages relate to the formal rulemaking process.

Below, we have excerpted just the borrower-specific Q&As and reformatted them to make them easier for you to read and understand. We hope you find this helpful as you try to understand the PPP loan program and how your organization might participate in it. Edits are marked in [brackets], as are editorial comments.

See https://bit.ly/cnpe4sba for our other helpful resources as you consider whether to apply for a PPP loan.

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TEMPORARY NEW BUSINESS LOAN PROGRAM: PAYCHECK PROTECTION PROGRAM

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, [nonprofits,] and businesses affected by the COVID-19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the "Paycheck Protection Program." Loans guaranteed 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. The following outlines the key provisions of the PPP.

SBA is authorized to guarantee loans under the PPP through June 30, 2020. Congress authorized a program level of $349 billion to provide guaranteed loans under this new 7(a) program. The intent of the Act is that SBA provide relief to America's small businesses expeditiously, which is expressed in the Act by giving all lenders delegated authority and streamlining the requirements of the regular 7(a) loan program. For example, for loans made under the PPP, SBA will not require the lenders to comply with [SBA's normal lending criteria as set out in13 CFR 120.150].

What are SBA's lending criteria?

SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness. Lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers' failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in this interim final rule. The program requirements of the PPP identified in this rule temporarily supersede any conflicting Loan Program Requirement (as defined in 13 CFR 120.10) [which excludes nonprofits, among other entities].

WHAT DO BORROWERS NEED TO KNOW AND DO?

Am I eligible?

You are eligible for a PPP loan if you

- have **500 or fewer employees** whose principal place of residence is in the United States, or
- are a business that operates in a certain industry and meet the applicable SBA employee-based size standards for that industry, **and**:

1. You are:
   a. A "small business concern" as defined in section 3 of the Small Business Act (15 USC 632), and subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act; [or]
   b. A tax-exempt **nonprofit organization described in section 501(c)(3)** of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business; **and**
2. You were **in operation on February 15, 2020**, and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC. *[Editor's note: Do not be misled by this mention of independent contractors. Below, they are excluded both from your computation of your monthly average payroll costs and from being counted when verifying your eligibility for loan forgiveness.]*

You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self- employed individual, [and] you were in operation on February 15, 2020.

You must also 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.

Could I be ineligible even if I meet the eligibility requirements above?

[Yes.] You are ineligible for a PPP loan if, for example:

1. You are engaged in any activity that is illegal under federal, state, or local law;
2. You are a household employer (individuals who employ household employees such as nannies or housekeepers);
3. An owner of 20% or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years; or
4. You, or any business owned or controlled by you or any of your owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government.

The Administrator, in consultation with the Secretary of the Treasury (the Secretary), determined that household employers are ineligible because they are not businesses. 13 CFR 120.100.

How do I determine whether I am ineligible?

Businesses that are not eligible for PPP loans are identified in [13 CFR 120.110] and described further in SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, except that **nonprofit organizations authorized under the Act are eligible**. (SOP 50 10 can be found [here].)

I have determined that I am eligible. How much can I borrow?

Under the PPP, the maximum loan amount is the lesser of $10 million or an amount that you will calculate using a payroll-based formula specified in the Act, as explained below. *[Editor's Note: 2.5 times your average monthly payroll costs over 12 months, as determined below.]*

How do I calculate the maximum amount I can borrow?

The following methodology, which is one of the methodologies contained in the Act, will be most useful for many applicants.

Step 1: Aggregate payroll costs (defined in detail below) from the last twelve months for employees whose principal place of residence is the United States. *[Editor's Note: Many banks are choosing to use data from January through December of 2019 rather than "trailing 12" data from April 1, 2019, through March 31, 2020, despite the wording of this step.]*

Step 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. *[Editor's Note: The last part of this step is puzzling, because independent contractors are excluded from the computation of average monthly payroll costs below.]*

Step 3: Calculate average monthly payroll costs (divide the amount from Step 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 (because it does not have to be repaid).

The examples below illustrate this methodology.

Example 1 No employees make more than $100,000
Annual payroll: $120,000; Average monthly payroll: $10,000
Multiply by 2.5 = $25,000; Maximum loan amount is **$25,000**

Example 2 Some employees make more than $100,000 [the surplus is $300,000]
Annual payroll: $1,500,000
Subtract compensation amounts in excess of an annual salary of $100,000: $1,200,000
Average monthly qualifying payroll: $100,000
Multiply by 2.5 = $250,000; Maximum loan amount is **$250,000**

Example 3 No employees make more than $100,000, outstanding EIDL loan of $10,000.
Annual payroll: $120,000; Average monthly payroll: $10,000
Multiply by 2.5 = $25,000; Add EIDL loan of $10,000 = $35,000
Maximum loan amount is **$35,000**

Example 4 Some employees make more than $100,000 [surplus is $300,000]

Outstanding EIDL loan of $10,000
Annual payroll: $1,500,000
Subtract compensation amounts in excess of an annual salary of $100,000: $1,200,000
Average monthly qualifying payroll: $100,000
Multiply by 2.5 = $250,000; Add EIDL loan of $10,000 = $260,000
Maximum loan amount is **$260,000**

What qualifies as "payroll costs?"

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; and
- payment of state and local taxes assessed on compensation of employees.

For an independent contractor or sole proprietor, ["payroll costs" means] wages, commissions, income, or net earnings from self-employment or similar compensation.

Is there anything that is expressly excluded from the definition of payroll costs?

Yes. The Act expressly excludes:

1. Any compensation of an employee whose principal place of residence is outside of the United States;
2. The compensation of an individual employee in excess of an annual salary of $100,000, prorated as necessary;
3. 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; and
4. Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127).

Do independent contractors count as employees for purposes of PPP loan calculations?

No. [Because] independent contractors [can] apply for a PPP loan on their own, … they do not count for purposes of a borrower's PPP loan calculation.

What is the interest rate on a PPP loan?

The interest rate will be 100 basis points or 1%.

The Administrator, in consultation with the Secretary, determined that a 1% interest rate is appropriate.

- First, it provides low-cost funds to borrowers to meet eligible payroll costs and other eligible expenses during this temporary period of economic dislocation caused by the coronavirus.
- Second, for lenders, the 100 basis points offers an attractive interest rate relative to the cost of funding for comparable maturities. For example, the FDIC's weekly national average rate for a 24-month CD deposit product for the week of March 30, 2020, is 42 basis points for non-jumbo and 44 basis points for jumbo (https://www.fdic.gov/regulations/resources/rates/).
- Third, the interest rate is higher than the yield on Treasury securities of comparable maturity. For example, the yield on the Treasury two-year note is approximately 23 basis points. This higher yield combined with the fact that the loans are 100% guaranteed by the SBA and the fact that lenders will receive a substantial processing fee from the SBA provide ample inducement for lenders to participate in the PPP.

What will be the maturity date on a PPP loan?

The maturity is two years. While the Act provides that a loan will have a maximum maturity of up to ten years from the date the borrower applies for loan forgiveness (described below), the Administrator, in consultation with the Secretary, determined that a two-year loan term is sufficient in light of the temporary economic dislocations caused by the coronavirus. Specifically, the considerable economic disruption caused by the coronavirus is expected to abate well before the two-year maturity date such that borrowers will be able to re-commence business operations and pay off any outstanding balances on their PPP loans.

Can I apply for more than one PPP loan?

No. The Administrator, in consultation with the Secretary, 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. This limitation will also help advance Congress' goal of keeping workers paid and employed across the United States.

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.

Is the PPP "first-come, first-served?"

Yes.

When will I have to begin paying principal and interest on my PPP loan?

You will not have to make any payments for six months following the date of disbursement of the loan. However, interest will continue to accrue on PPP loans during this six-month deferment. The Act authorizes the Administrator to defer loan payments for up to one year. The Administrator determined, in consultation with the Secretary, that a six-month deferment period is appropriate in light of the modest interest rate (1%) on PPP loans and the loan forgiveness provisions contained in the Act.

Can my PPP loan be forgiven in whole or in part?

Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and employee and compensation levels are maintained.

The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25% of the loan forgiveness amount may be attributable to non- payroll costs.

While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll.

The Administrator has determined in consultation with the Secretary that 75% is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75% of which is equivalent to eight weeks of payroll (8 weeks / 2.5 months = 56 days / 76 days = 74% rounded up to 75%).

Limiting non-payroll costs to 25% of the forgiveness amount will align these elements of the program, and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

Do independent contractors count as employees for purposes of PPP loan forgiveness?

No. [Because] independent contractors [can] apply for a PPP loan on their own, … they do not count for purposes of a borrower's PPP loan forgiveness.

What forms do I need and how do I [apply]?

The applicant must submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation, as described above. The lender must submit SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

How can PPP loans be used?

The proceeds of a PPP loan are to be used for:

1. payroll costs (as defined in the Act and above);
2. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
3. mortgage interest payments (but not mortgage prepayments or principal payments);
4. rent payments;
5. utility payments;
6. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
7. refinancing an SBA EIDL loan made between January 31, 2020, and April 3, 2020.

If you received an SBA EIDL loan from January 31, 2020, through April 3, 2020, you can apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to $10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

However, at least 75% of the PPP loan proceeds [must] be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included. For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness.

While the Act provides that PPP loan proceeds may be used for the purposes listed above and for other allowable uses described in section 7(a) of the Small Business Act (15 U.S.C. 636(a)), the Administrator believes that finite appropriations and the structure of the Act warrant a requirement that borrowers use a substantial portion of the loan proceeds for payroll costs, consistent with Congress' overarching goal of keeping workers paid and employed.

As with the similar limitation on the forgiveness amount explained earlier, the Administrator, in consultation with the Secretary, has determined that 75% is an appropriate percentage that will align this element of the program with the loan amount, 75% of which is equivalent to eight weeks of payroll. This limitation on use of the loan funds will help to ensure that the finite appropriations available for these loans are directed toward payroll protection, as each loan that is issued depletes the appropriation, regardless of whether portions of the loan are later forgiven.

What happens if PPP loan funds are misused?

If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

What certifications [must PPP loan applicants make]?

On the Paycheck Protection Program application, an authorized representative of the applicant must certify in good faith to all of the below:

1. The 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. *[Editor's note: Independent contractors are excluded from your computation of monthly average payroll cost and when determining whether you qualify for loan forgiveness.]*
2. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.
3. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable such as for charges of fraud. As explained above, not more than 25% of loan proceeds may be used for non-payroll costs.
4. [The applicant will provide the lender with] documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.
5. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. As explained above, not more than 25% of the forgiven amount may be for non-payroll costs.
6. During the period beginning on February 15, 2020, and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.
7. [The applicant must] certify that the information provided in [the] application and the information provided in all supporting documents and forms is true and accurate in all material respects. [The applicant] understands that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to $250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than $5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than $1,000,000.
8. [The applicant must] acknowledge that the lender will confirm the eligible loan amount using tax documents … submitted [and] affirm that these tax documents are identical to those submitted to the Internal Revenue Service. [The applicant must] also … agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.