

Paycheck Protection Program – Overview

(as of April 9, 2020)

The CARES Act creates the Paycheck Protection Program (PPP), a new loan program under section 7(a) of the Small Business Act, to be implemented by the Small Business Administration (SBA). The CARES Act provides \$349 billion for PPP loans. Because this is a new program, SBA is still establishing many of its components and there are still grey areas surrounding certain requirements and how the program will be implemented. We will continue to update our information as more guidance and rules are issued.

In summary:

- In general, agricultural producers and co-ops with 500 or fewer employees, including employees of businesses with which they have an affiliation, are eligible.
 - Loan amounts are capped at \$10 million, and interest rates are set at 1%.
 - PPP loans can only be used for certain expenses, including payroll costs, interest payments on mortgages, rent, and utilities, but at least 75 percent of PPP loans must be used for payroll costs.
 - Loan forgiveness on PPP loans is available.
 - You apply for a PPP loan directly with an approved lender.
 - The application period for PPP loans ends June 30, 2020.
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Eligibility

Based on SBA rules released April 2 and 3, 2020, agricultural producers and co-ops with 500 or fewer employees – including employees of businesses with whom they have an affiliation – can access PPP loans, assuming no other factors limit eligibility.

Affiliations are determined on a business-by-business basis, based on one business having a majority control over another business. The rules for determining affiliation for PPP are located here:

<https://home.treasury.gov/system/files/136/Affiliation%20rules%20overview%20%28for%20public%29.pdf>

Businesses with more than 500 employees may still be eligible for PPP loans, if they meet both of the following criteria:

- 1) the business has a maximum tangible net worth of \$15 million or less, *and*
- 2) the business has an average net income after federal income taxes (excluding carry-over losses) for the two full fiscal years before the date of loan application of \$5 million or less

Only employees whose principal place of residence is in the U.S. are included in the employee-count. According to the legislative language, “individuals employed on a full-time, part-time, or other basis” count towards the 500-employee limit. From what we can tell, “other basis” includes seasonal employees. Independent contractors do *not* count towards a business’s employee count.

PPP Loan Details

Applicants cannot apply for or use multiple PPP loans to cover the same expenses.

Loans have a two-year term, loan amounts are capped at \$10 million, and the interest rate on any unforgiven amount is 1%.

Loan amounts are calculated to cover 2.5 times the average monthly payroll costs (measured by payroll expenses over the one-year period preceding loan origination date).

At least 75 percent of the loan funds must be used for payroll costs. Payroll costs include employee compensation (including retirement benefits and employer costs related to group health care benefits, such

as insurance premiums) and state and local payroll taxes, with an important caveat: Neither compensation for an employee whose principal place of residence is outside of the U.S. nor compensation for an employee whose annual salary is more than \$100,000 (prorated as necessary) can be included as “payroll costs” for the purposes of PPP.

Non-payroll costs on which 25 percent of the loan funds may be spent include interest on mortgage obligations (but not prepayments on interest) incurred before February 15, 2020, rent under lease agreements in force before February 15, 2020, utilities for which service began before February 15, 2020, and interest on any other debt incurred before February 15, 2020.

Loan payments are deferred for six months, but interest will accrue during those six months. SBA is waiving certain fees for PPP loans that it typically collects for other types of business loans.

The borrower could be eligible for PPP loan forgiveness up to the full amount of the loan and accrued interest. In general, the loan forgiveness amount shall be the sum of payroll costs (not including costs for compensation above \$100,000 annually), interest payments on mortgages, and rent and utility payments made within the first eight weeks of loan dispersal. Loan forgiveness will be reduced if the borrower reduces employment or if the borrower reduces salaries and wages by more than 25 percent (forgiveness reduced by a ratio similar to reduction in employment or reduction in compensation paid).

By taking a PPP loan, borrowers are making themselves ineligible for certain tax provisions extended to employers in other sections of the CARES Act.

Application Details

Loans can be issued until June 30, 2020. A loan applicant typically must meet specific application requirements for SBA business loans, but some of these are not required for PPP loans. For a PPP loan:

- Applicants do not need to demonstrate they are unable to obtain credit elsewhere
- Applicants do not need to provide a personal guarantee or collateral

The CARES Act instructs the SBA Administrator to issue guidance to lenders to prioritize the following when considering PPP loan applications:

“small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined in section 8(d)(3)(C)), women, and businesses in operation for less than 2 years.”

How to Apply

You apply for a PPP loan directly with an approved lender. According to the Treasury Department, approved lenders are existing SBA lenders and any federally insured depository institution, federally insured credit union, and Farm Credit System institution who are participating. Other regulated lenders will be available to make PPP loans once they are approved and enrolled in the program. You should consult with your local lender as to whether it is participating. Here is an SBA tool to help locate PPP lenders near you, although not all PPP lenders are necessarily on this SBA site:

<https://www.sba.gov/paycheckprotection/find>

Here is more information for applicants, provided by the Treasury Department:

<https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf>

Here is the PPP loan application form (although this may be updated), as provided by the Treasury Department: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>