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CARES Act & Paycheck Protection Program *Frequently Asked Questions*

Please note: This FAQ reflects SBA guidance as of April 6, 2020 and should not be considered an all-inclusive summary. For more information, visit busey.com/CARESact or the U.S. Small Business Administration [site](#).

President Trump signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law on March 27, 2020. As part of this nearly \$2.2 trillion aid package to fight the COVID-19 pandemic, Congress appropriated approximately \$349 billion for the creation of the Paycheck Protection Program (PPP). The PPP provides payroll assistance for nearly 30 million small businesses, and select nonprofits, in the form of 100% guaranteed loans from the U.S. Small Business Administration (SBA).

Can you provide a basic overview of the program?

Eligible borrowers work with lenders to apply for, and receive, loans up to 2.5 times their average monthly payroll expenses for the prior year. Loans, which can be issued between April 3, 2020 and June 30, 2020, will carry a 1% interest rate with a two-year term. Loan payments are deferred for the first six months of the loan. In addition, PPP loans contain a forgiveness process, allowing up to eight weeks of covered expenses, including both principal and interest, to be forgiven for the borrower with no tax consequence. Any remaining balance after the loan forgiveness period maintains a 100% government guarantee while the borrower makes payments.

What borrowers are eligible?

Borrowers may be eligible if they have 500 or fewer employees or are certain businesses that meet SBA size standards. Additionally, 501(c)(3) nonprofits, 501(c)(19) veteran organizations and certain tribal concerns qualify for PPP loans. Borrowers may also be sole proprietors, independent contractors or self-employed. Borrowers must have been in operation on February 15, 2020 and employed either salaried employees subject to payroll taxes or paid independent contractors.

No eligible borrower may receive more than one PPP loan. Borrowers must certify they meet the above criteria, were impacted by current economic uncertainty and will use the funds for allowable uses. Borrowers must also provide the relevant documentation as part of this certification and certify the information is accurate.

What are the loan terms?

These first-come, first-served loans are offered until June 30, 2020, or until the program runs out of funds. Loans are capped at the lesser of 250% of a borrower's average monthly payroll costs, or \$10 million. Payroll costs include, but are not





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limited to, salary, paid leave, medical and healthcare. Salary for employees making more than \$100,000 is capped at that level for the calculation of loan size. All loans have a 1% interest rate and a two-year term. Loans are 100% guaranteed by the SBA and payments may be deferred for up to six months. E-signatures or e-consents may be used.

PPP loans may be used to pay for payroll costs, mortgage interest obligations, rent obligations, utilities and any other interest payment on debt obligations accrued before February 15, 2020. SBA requires 75% of the loan to be used for payroll costs, while the remaining 25% can be used for the other expenses. Funds used for purposes other than those listed above must be repaid by the borrower. No fees will be collected by SBA from the borrower.

If a borrower uses PPP funds for unauthorized purposes, SBA will direct the borrower to repay those amounts.

- If a borrower knowingly uses the funds for unauthorized purposes, the borrower will be subject to additional liability such as charges for fraud.
- If a borrower's shareholders, members or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member or partner for the unauthorized use.

Is loan forgiveness available?

After disbursement of the loan, a borrower is eligible for loan forgiveness on up to eight weeks of covered expenses. A borrower will apply to a lender by submitting all the relevant paperwork, at which time a lender will have up to 60 days to approve or deny the application. Importantly, lenders can rely on borrower documentation for loan forgiveness. If the loan forgiveness application is approved, that portion of a borrower's loan is forgiven, and SBA will pay the lender the part of the principal amount plus interest.

SBA also has a pre-purchase option that allows a lender to submit the expected amount of funds spent after seven weeks from the date of the loan's disbursement. SBA will then purchase the expected forgiveness amount within 15 days.

The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an 8-week period; when does that 8-week period begin?

The 8-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 10 calendar days from the date of loan approval.

What could make an otherwise eligible borrower ineligible for a PPP loan?

An otherwise eligible borrower may be found ineligible if they are:





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- Engaged in an activity that is illegal under federal, state, or local law;
- A household employer (individuals who employ household employees such as nannies or housekeepers);
- An owner of 20 percent or more of the equity of the applicant small business 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
- The borrower, or any business owned or controlled by the borrower or any of the 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.

What forms need to be completed and submitted?

The applicant must submit:

- SBA Form 2483 ([Paycheck Protection Program Application Form](#)), and
- Payroll documentation.

Can a business still be eligible for a PPP loan if it has over 500 employees? What categories may have more than 500 employees?

Yes. If it is:

- A business operating in certain industries,
- Meets the applicable SBA employee-based size standards or that industry, and
- Is 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 CARES Act.

Franchise and food services may have more than 500 employees. However, they may not have more than 500 employees at any one location. For this program, the SBA's affiliation standards are waived for small businesses:

- In the hotel and food services industries as listed in [NAICS code 72](#);
- Franchises in the SBA's [Franchise Directory](#); or
- Receiving financial assistance from small business investment companies licensed by the SBA.

If the borrower is part of a group of affiliated companies and doesn't have tax documents breaking out payroll costs, how can the borrower support the calculation of the loan amount and truthfully make the certification?

- The first question is whether the applicant small business is still eligible for a PPP loan under the affiliation rules. The SBA size and affiliation rules can be found on the [website](#).



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- If the subsidiary business is eligible for a PPP loans, then each affiliate company should have its individual payroll tax filings. If there is a common parent or other affiliate that is the employer for employees working in multiple companies, it would appear that the legal entity actually making the payment should provide the payroll information, and perhaps calculate and provide separate entity detail from transfer pricing calculations, based on costs that are being transferred via transfer pricing to the appropriate affiliate entity.

Are tax exempt nonprofits, including churches, veteran organizations and tribal businesses, eligible for PPP loans?

Yes, many tax-exempt nonprofits are eligible for PPP loans. Eligible nonprofits include:

- Tax-exempt nonprofit organization described in [section 501\(c\)\(3\)](#) of the Internal Revenue Code (IRC). This type of organization includes charitable organizations, churches and religious organizations, private foundations and others
- 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.

Is agriculture eligible to receive PPP loans?

Yes. Agriculture is addressed under [SBA 7\(a\) loan eligibility](#), and [15 USC 632](#). Additionally, [CFR 120.103](#) allows for a Memorandum of Understanding between USDA and SBA for farm related business loan programs. Agricultural cooperatives are eligible under [CFR 121.105](#).

The [Interim Final Rule](#) for Business Loan Temporary Changes, allows for agriculture to be eligible for PPP loans if the business “has 500 or fewer employees whose principal place of residence is in the United States **OR** (emphasis added) is a business that operates in a certain industry and meets applicable SBA employee-based size standards for that industry.” Therefore, agricultural businesses under 500 employees will not have to adhere to SBA size standards.

Are affiliates considered together for purposes of determining eligibility?

In most cases, a borrower will be considered together with its affiliates for purposes of determining eligibility for the PPP. Under SBA rules, entities may be considered affiliates based on factors including stock ownership, overlapping management, and identity of interest.

The detailed affiliation standards contained in section 121.103 currently do not apply to PPP borrowers, because section 121.103(a)(8) provides that applicants in SBA’s Business Loan Programs (which include the PPP) are subject to the affiliation rule contained in [13 CFR 121.301](#).





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Are otherwise qualified faith-based organizations exempt from SBA's affiliation rules?

Yes. The [Interim Final Rule](#) for Business Loan Program Temporary Changes recognized that otherwise qualified faith-based organizations are exempted from the SBA affiliation rules.

The SBA is exempting exempt faith-based organizations from SBA's affiliation rules. Accordingly, the SBA's affiliation rules do not apply to the relationship of any church, convention or association of churches or other faith-based organization or entity to any other person, group, organization or entity based on a sincere religious teaching or belief or otherwise constitutes the exercise of religion. This includes any relationship to a parent or subsidiary and other applicable aspects of organizational structure or form.

A faith-based organization seeking loans under this program may rely on a reasonable, good faith interpretation in determining whether its relationship to any other person, group, organization or entity is exempt from the affiliation rules under this provision.

SBA will not assess, and will not require participating lenders to assess, the reasonableness of the faith-based organization's determination of its relationships and affiliations.

What documentation is needed for those applying as a sole proprietorship, independent contractor or self-employed?

Individuals must submit documentation to establish their eligibility including:

- Payroll processor records,
- Payroll tax filings,
- Form 1099-MISC, or
- Income and expenses from a sole proprietorship.

What alternative documentation is acceptable for individuals without the required formal documents and records?

Individuals who do not have any such documentation must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

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



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are required under some state registration laws to report wage and other data on 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 PEOs 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.

Do PPP loans require BSA reverification for existing customers?

PPP loans for existing customers will not require reverification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.

As stated by FinCEN, "PPP loans for existing customers will not require re-verification under applicable BSA requirements, unless other indicated by the institution's risk-based approach to BSA compliance" (emphasis added). In other words, banks will have to make an independent determination, based on their risk assessment of an existing customer, whether to update existing beneficial ownership information on file.

For non-PPP loans, a September 2018 FinCEN ruling specified that if a loan pre-dates the effective date of the rule (May 11, 2018) and the modification or renewal does not require underwriting or approval, the beneficial ownership requirements do not apply. Essentially, then, most non-PPP loans will require full compliance with the beneficial ownership requirements. However, the FinCEN guidance acknowledges that a risk-based approach "may result in reasonable delays in compliance."

What is excluded from the definition of payroll costs?

The CARES Act expressly excludes:

- Any compensation of an employee whose principal place of residence is outside of the United States;
- The compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary;
- Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including:
 - a. Employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and





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- b. Income taxes required to be withheld from employees; and
- 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).

The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?

No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

Owners of partnerships and limited liability companies sometimes compensate themselves through profits distributions, rather than salary. Are such distributions “payroll costs” for purposes of determining the maximum loan amount and the amount of the loan that may be forgiven?

Neither the CARES Act statutory language, nor the IFR speaks to this scenario specifically. However, it seems to be the type of compensation outside of the Congressional intent of the underlying legislation.

The definition of payroll costs in the statute encompasses compensation, including “salary, wages, commissions or similar compensation” as earnings from employment. If the payments are not subject to employment or self-employment tax, it may be difficult to treat those amounts as payroll costs for the purposes of a PPP loan.

Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower’s payroll costs?

No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business’s payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?

In general, borrowers can calculate their aggregate payroll costs using 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





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

Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. 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).

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 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 Federal Insurance Contributions Act (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 payroll tax. For 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 under the statute.²

Do PPP loans cover paid sick leave?

Yes. PPP loans covers payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes 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). Learn more about the Paid Sick Leave Refundable Credit [here](#).

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





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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.

I filed or approved a loan application based on the version of the PPP Interim Final Rule published on April 2, 2020. Do I need to take any action based on the updated guidance in these FAQs?

No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications reflected in these FAQs.

I need to request a loan to support my small business operations in light of current economic uncertainty. However, I pleaded guilty to a felony crime a very long time ago. Am I still eligible for the PPP?

Yes. Businesses are only ineligible if an owner of 20 percent or more of the equity of the applicant is presently incarcerated, on probation, on parole; subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or, within the last five years, for any felony, has been convicted; pleaded guilty; pleaded nolo contendere; been placed on pretrial diversion; or been placed on any form of parole or probation (including probation before judgment).

² The definition of "payroll costs" in the CARES Act, 15 U.S.C. 636(a)(36)(A)(viii), excludes "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period," defined as February 15, 2020, to June 30, 2020. As described above, the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers remain paid and employed. Further, because the reference period for determining a borrower's maximum loan amount will largely or entirely precede the period from February 15, 2020, to June 30, 2020, and the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.