



CORONAVIRUS COMMUNICATION

CARES Act & Paycheck Protection Program *Frequently Asked Questions*

Please note: This FAQ reflects SBA guidance as of April 16, 2020 and should not be considered an all-inclusive summary. Additional guidance may be issued at any time. For more information, visit busey.com/CARESact or the U.S. Small Business Administration [site](#).

Background

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).

The PPP exhausted its initial \$349 billion in funding on April 16, 2020, and the SBA stopped accepting applications at that time. The PPP received over 1.6 million applications from eligible business owners in less than two weeks.

On Tuesday, April 21, 2020, the U.S. Senate unanimously passed legislation to provide an additional \$310 billion in new funding for the PPP. The House approved the bill on Thursday, April 23, 2020, and the President signed it into law on Friday, April 24.

With additional funding authorized, Busey Bank is again accepting applications and we anticipate a continued high demand for these loans. With the expected demand and the qualification standards for the PPP, Busey is unable to guarantee that a loan will be made to your business or that your application will be processed by the SBA before additional PPP funds are depleted. **The SBA will begin processing applications the morning of Monday, April 27, 2020.**

Busey will process applications consistent with criteria established by the SBA and Busey, which may change at any time, without notice. Please remember, you may only receive one PPP loan and cannot have PPP applications open with more than one bank.

Please review the following Frequently Asked Questions for additional information.



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Frequently Asked Questions

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 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.





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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 eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower.

What is the maximum forgiveness amount?

The expected forgiveness amount may not exceed the total amount of principal on the PPP loan or pool of loans.

How is the forgiveness amount calculated?

The actual amount of loan forgiveness depends, in part, on payments made over the eight-week period following the date of the loan, including:

1. The total amount of payroll costs,
2. Payments of interest on mortgage obligations incurred before February 15, 2020,
3. Rent payments on leases dated before February 15, 2020, and
4. Utility payments under service agreements dated before February 15, 2020.

How much of the loan forgiveness must be attributable to payroll costs?

At least 75% of the loan forgiveness amount must be attributed to payroll costs. Not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs.



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

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

- 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.

How can PPP loans be used by small businesses?

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

1. Payroll costs (as defined in the CARES Act and SBA's IFR)
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.

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



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- 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?

- Confirm that 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.
- 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, the legal entity making the payment should:
 - Provide the payroll information, and
 - 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:

1. Tax-exempt nonprofit organizations:
 - a. As described in [section 501\(c\)\(3\)](#) of the Internal Revenue Code (IRC).
 - b. This type of organization includes:
 - i. Charitable organizations,
 - ii. Churches and religious organizations,
 - iii. Private foundations, and
 - iv. Other organizations described in the code.
2. Tax-exempt veterans organizations:
 - a. As described in [section 501\(c\)\(19\)](#) of the IRC
 - b. Defined as follows:
 - i. At least 75 percent of its members must be past or present members of the United States Armed Forces
 - ii. At least 97.5 percent of its members must be:





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1. Present or former members of the United States Armed Forces,
 2. Cadets, including only students in college or university ROTC programs or at Armed Services academies, or
 3. Spouses, widows, widowers, ancestors, or lineal descendants of individuals referred to above.
- iii. It must be operated exclusively for one or more of the following purposes:
1. Promoting the social welfare of the community (e.g., to promote the common good and general welfare of the people of the community);
 2. Assisting disabled and needy war veterans and members of the United States Armed Forces, their dependents, and the widows and orphans of deceased veterans;
 3. Providing entertainment, care, and assistance to hospitalized veterans or members of the United States Armed Forces
 4. Carrying on programs to perpetuate the memory of deceased veterans and members of the United States Armed Forces and comfort their survivors;
 5. Conducting programs for religious, charitable, scientific, literary or educational purposes;
 6. Sponsoring or participating in activities of a patriotic nature;
 7. Providing insurance benefits for members or their dependents, or;
 8. Providing social and recreational activities for members.
- iv. No part of its net earnings may inure to the benefit of any private shareholder or individual."
3. Tribal business concerns: As described in [section 31\(b\)\(2\)\(C\)](#) of the Small Business Act:
- a. Owned in part by one or more Indian tribal governments, or
 - b. By a corporation that is wholly owned by 1 or more Indian tribal governments, if all other owners are either United States citizens or small business concerns."

Is a hedge fund or private equity firm eligible for a PPP loan?

No. Hedge funds and private equity firms are primarily engaged in investment or speculation, and such businesses are therefore ineligible to receive a PPP loan. The Administrator, in consultation with the Secretary, does not believe that Congress intended for these types of businesses, which are generally ineligible for section 7(a) loans under existing SBA regulations, to obtain PPP financing.





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Do the SBA affiliation rules prohibit a portfolio company of a private equity fund from being eligible for a PPP loan?

Borrowers must apply the affiliation rules that appear in 13 CFR 121.301(f), as set forth in the Second PPP Interim Final Rule (85 FR 20817). The affiliation rules apply to private equity-owned businesses in the same manner as any other business subject to outside ownership or control.¹ However, in addition to applying any applicable affiliation rules, all borrowers should carefully review the required certification on the Paycheck Protection Program Borrower Application Form (SBA Form 2483) stating that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."

¹ However, the Act waives the affiliation rules if the borrower receives financial assistance from an SBA-licensed Small Business Investment Company (SBIC) in any amount. This includes any type of financing listed in 13 CFR 107.50, such as loans, debt with equity features, equity, and guarantees. Affiliation is waived even if the borrower has investment from other non-SBIC investors.

Is a hospital owned by governmental entities eligible for a PPP loan?

A hospital that is otherwise eligible to receive a PPP loan as a business concern or nonprofit organization (described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code) shall not be rendered ineligible for a PPP loan due to ownership by a state or local government if the hospital receives less than 50% of its funding from state or local government sources, exclusive of Medicaid. The Administrator, in consultation with the Secretary, determined that this exception to the general ineligibility of government-owned entities, 13 CFR 120.110(j), is appropriate to effectuate the purposes of the CARES Act.

Are businesses that receive revenue from legal gaming eligible for a PPP Loan?

A business that is otherwise eligible for a PPP Loan is not rendered ineligible due to its receipt of legal gaming revenues, and 13 CFR 120.110(g) is inapplicable to PPP loans. Businesses that received illegal gaming revenue remain categorically ineligible. On further consideration, the Administrator, in consultation with the Secretary, believes this approach is more consistent with the policy aim of making PPP loans available to a broad segment of U.S. businesses.

Does participation in an employee stock ownership plan (ESOP) trigger application of the affiliation rules?

No. For purposes of the PPP, a business's participation in an ESOP (as defined in 15 U.S.C. § 632(q)(6)) does not result in an affiliation between the business and the ESOP. The Administrator, in consultation with the Secretary, determined that this is appropriate given the nature of such plans. Under an ESOP, a business concern contributes its stock (or money to buy its stock or to pay off a



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loan that was used to buy stock) to the plan for the benefit of the company's employees. The plan maintains an account for each employee participating in the plan. Shares of stock vest over time before an employee is entitled to them. However, with an ESOP, an employee generally does not buy or hold the stock directly while still employed with the company. Instead, the employee generally receives the shares in his or her personal account only upon the cessation of employment with the company, including retirement, disability, death, or termination.

Will I be approved for a PPP loan if my business is in bankruptcy?

No. If the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, the applicant is ineligible to receive a PPP loan. If the applicant or the owner of the applicant becomes the debtor in a bankruptcy proceeding after submitting a PPP application but before the loan is disbursed, it is the applicant's obligation to notify the lender and request cancellation of the application. Failure by the applicant to do so will be regarded as a use of PPP funds for unauthorized purposes.

The Administrator, in consultation with the Secretary, determined that providing PPP loans to debtors in bankruptcy would present an unacceptably high risk of an unauthorized use of funds or non-repayment of unforgiven loans. In addition, the Bankruptcy Code does not require any person to make a loan or a financial accommodation to a debtor in bankruptcy. The Borrower Application Form for PPP loans (SBA Form 2483), which reflects this restriction in the form of a borrower certification, is a loan program requirement. Lenders may rely on an applicant's representation concerning the applicant's or an owner of the applicant's involvement in a bankruptcy proceeding.

Are agricultural producers, farmers, and ranchers eligible for PPP loans?

Yes. Agricultural producers, farmers, and ranchers are eligible for PPP loans if: (i) the business has 500 or fewer employees, or (ii) the business fits within the revenue-based sized standard, which is average annual receipts of \$1 million.

Additionally, agricultural producers, farmers, and ranchers can qualify for PPP loans as a small business concern if their business meets SBA's "alternative size standard." The "alternative size standard" is currently: (1) maximum 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.





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For all of these criteria, the applicant must include its affiliates in its calculations. [Link](#) to Applicable Affiliation Rules for the PPP.

Are agricultural and other forms of cooperatives eligible to receive PPP loans?

As long as other PPP eligibility requirements are met, small agricultural cooperatives and other cooperatives may receive PPP loans.

Are H-2A and H-2B workers counted as employees for PPP eligibility and calculation of payroll costs?

No. H-2A and H-2B workers on payroll do not count towards eligibility and calculation. Only employees with a principal place of residence in the U.S. counted for PPP eligibility purposes according to USDA.

What documentation is needed for sole proprietor farms?

Sole proprietor farmers need to provide accurate documentation. This may include:

- Payroll processor records,
- Payroll tax filings, or Form 1099-MISC, or
- Income and expenses from a sole proprietorship, or
- 2019 Form 1040 Schedule C.

Is there other documentation that can be used if a sole proprietor farm does not have this documentation?

If they cannot provide such documentation, the borrower must provide other supporting documentation sufficient to demonstrate the qualifying payroll amount. More information can be found [here](#).

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](#).

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



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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.

This exemption means that 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.

Are sole proprietorships, independent contractors, and the self-employed eligible for PPP loans?

Yes. Individuals are eligible for PPP loans if:

- They operate as a:
 - Sole proprietorship,
 - Independent contractor, or
 - Eligible self-employed individual, and
- They were in operation on February 15, 2020.
- Their principal place of residence is in the United States; and
- They filed or will file a Form 1040 Schedule C for 2019.

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.



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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 documentation is needed for self-employed individuals who were not in operation in 2019, but were in operation in February 2020, and will not file 2019 taxes?

SBA will issue additional guidance for those individuals with self-employment income who:

- Were not in operation in 2019, but
- Were in operation on February 15, 2020, and
- Will file a Form 1040 Schedule C for 2020.

Are there any other restrictions on how individuals with income from self-employment who file a 2019 Form 1040, Schedule C can use PPP loan proceeds?

Yes. At least 75 percent of the PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs (but not for forgiveness purposes), the amount of any refinanced EIDL will be included. The rationale for this 75 percent floor is contained in the First PPP Interim Final Rule.

Will receipt of PPP funds interfere with an individual applicant's eligibility for unemployment assistance?

Participation in the PPP may affect eligibility for state administered unemployment compensation or unemployment assistance programs, including the programs authorized by Title II, Subtitle A of the CARES Act, or CARES Act Employee Retention Credits.

Are partnerships eligible for PPP loans?

Yes. Partnerships are eligible for PPP loans under the CARES Act.

Are partnerships and LLCs limited to one PPP loan?

Yes.

- SBA and the US Treasury determined that limiting a partnership and its partners, including an LLC filing taxes as a partnership, to one PPP loan is necessary to help ensure that as many eligible borrowers as possible obtain PPP loans before the statutory deadline of June 30, 2020.
- This limitation will allow lenders to more quickly process applications and lower the burdens of applying for partnerships/partners.





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Can a partner in a partnership apply for a PPP as self-employed?

No. Partners in a partnership may not submit a separate PPP loan application for themselves as a self-employed individual.

Why aren't partners allowed to apply as self-employed?

SBA determined that permitting partners to apply as self-employed individuals would create unnecessary confusion regarding which entity—the partner or the partnership—applies for partner and LLC member income. This would cause difficulty in the coordination of use of loan proceeds, and allocation issues. Rent, mortgage interest, utilities, and other debt service are generally incurred at the partnership level, not partner level, so it is most natural to provide the funds for these expenses to the partnership, not individual partners.

How do partners in a partnership or limited liability company (LLC) apply for a PPP loan?

The self-employment income of general active partners may be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by or on behalf of the partnership.

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 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 an [IRS Schedule R \(Form 941\), Allocation Schedule for Aggregate Form 941 Filers](#), attached to the PEO's 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.
 - 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



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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." 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.

What qualifies as "payroll costs" for a small business?

Payroll costs consist of:

1. Compensation to Employees with principal residence is the United States
 - a. Salary, wages, commissions, or similar compensation,
 - b. Cash tips or the equivalent based on:
 - ii. Employer records of past tips or,
 - iii. In the absence of such records, a reasonable, good-faith employer estimate of such tips.
2. Payment for vacation, parental, family, medical, or sick leave;
3. Allowance for separation or dismissal;
4. Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement;
5. Payment of state and local taxes assessed on compensation of employees.

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
 - 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:





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- 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.

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.

Payroll Costs:

- 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.
- Applicants that not in business from February 15, 2019 to June 30, 2019: Use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Number of Employees:

- 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, or
- 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
 - If the business has not been operational for 12 months, the average number of employees for each of the pay periods that the business has been operational.

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 CARES 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





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(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.

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.

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.
- 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.

What tax documentation should borrowers provide? Some are saying the borrower needs to provide its Form W-3, while I've seen others stating that Forms 941/942/945 should be provided.

The SBA guidance favors IRS form 941 to calculate payroll costs, maximum loan amount, and loan forgiveness. However, a borrower's W-3 and the 940 series of forms also may offer details to support these calculations.

As the loan amount is determined based on monthly payroll amounts, the quarterly information on Form 941 is specifically requested to identify, calculate, and prorate the





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amount of qualified payments to employees.

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 CARES 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.

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.

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:

1. Payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages.
2. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay;
 - a. Their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the





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- employee or withheld from employee wages.
- b. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers remain paid and employed.
 3. 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.

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?

Yes. 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 previously submitted loan applications that have not yet been processed may be revised based on clarifications reflected in Treasury's April 6, 2020 FAQs.

Is a small business owner who has pleaded guilty to a felony crime a very long time ago still eligible for the PPP?

Yes. Businesses are only ineligible if an owner of 20 percent or more of the equity of the





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applicant:

1. 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
2. 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).

Can a borrower refinance an existing SBA Economic Injury Disaster Loan (EIDL) loan into a PPP Loan?

Yes. If the EIDL was made from January 31, 2020-April 3, 2020, the borrower may apply for a PPP loan and refinance the existing EIDL into the PPP loan.

Can an EIDL be refinanced into a PPP loan even if it was not used for payroll costs?

If the EIDL was not used for payroll costs, it does not affect the borrower's eligibility for a PPP loan. If the EIDL was used for payroll costs, your PPP loan must be used to refinance your EIDL.

How is the EIDL \$10,000 advance calculated into the PPP loan?

Proceeds from any advance up to \$10,000 on the EIDL will be deducted from the loan forgiveness amount on the PPP loan.

How does an EIDL refinance into a PPP loan effect the PPP loan forgiveness determination?

For purposes of determining the 75% 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.

By submitting an application to Busey for a loan under the PPP, the applicant(s): (a) understand that Busey anticipates a high volume of applications and there may be processing delays and system failures that interfere with submission of an application to the SBA, that Busey does not represent or guarantee that it will submit an application before funds are no longer available under the PPP or at all, and that Busey will not be responsible if applicant(s) do not receive a loan because funds are no longer available under the PPP, because funds were not disbursed within ten (10) days of SBA approval, or for any other reason, (b) certify that all information contained in such application or otherwise delivered from time to time in connection with such application is true in all material respects, (c) understand that Busey will rely on such information in deciding whether or not to grant or continue credit to the applicant(s) and in the administration of any loan to applicant(s) under the PPP, (d) understand that an application will only be considered a complete application upon the submission of all supporting documentation required by the application and that the applicant(s) may be asked for additional information based upon SBA rules from time to time in effect and/or required by Busey, (e) understand that Busey's acceptance of an application does not constitute a promise or commitment to lend to applicant(s), (f) understand that Busey can only make a loan if funds remain available under the PPP and Busey does not control how quickly the SBA will respond to any application or in what order, and (g) understand such application and any potential loan to applicant(s) is subject to the requirements of the PPP, which may change at any time, without notice.

