

How is the maximum amount of the loan available under the Paycheck Protection Program (PPP) determined?

The calculation of the maximum amount of the loan is based on the yearly salary and then allocated on a monthly basis, not \$8,333.33/month. Pursuant to Section 2 (e), the maximum loan amount that can be borrowed is based on the aggregate payroll costs for the last twelve months. Compensation in excess of the annual salary (or amounts paid to an independent contractor/sole proprietor) of \$100,000 is subtracted. The average monthly payroll costs are then determined.

Are independent contractors included in the FTE count when applying for an SBA loan?

Independent contractors will not be included in an employer's payroll and independent contractors must apply for their own loans (Section 2(h)).

For purposes of calculating the maximum loan amount, what is included in the salary calculation?

In determining the maximum loan amount in Section 2(e), "salary" in step 2 of the calculation in Section 2(e) includes all payroll costs as following the statute. As such, all costs will be considered in calculating the \$100,000 limitation.

The SBA Q&A could be interpreted to allow for separation of costs such that compensation would include salary, wages, commissions or similar compensation allowing the other forms of payment not to be restricted in the \$100,000 limitation calculation. Lacking additional guidance, we will lean on the statute.

In determining the loan amount, are any tax payments netted against payroll costs?

In determining the loan amount, FICA contributions, Railroad retirement act taxes and income taxes required to be withheld should not be netted against payroll costs. The payroll costs should be at a gross amount, not net. Section 2 (e) provides the loan calculation and refers to Section 2 (f) to define "payroll costs." The FICA contributions, Railroad retirement taxes and income tax withholdings are for 2020, not 2019. As such they will not impact the 2019 average monthly payroll amounts.

- If the legislation dates are used (12 months prior to the loan), then there would be a required reduction for these items that are paid in February and March of 2020.

What is my interest rate under the PPP program?

The interest rate was increased to 1%, up from the previous Treasury guidance that announced a .5% interest rate. Also, the term of the loan is two years, rather than the ten-year period.

What is the maturity date on a PPP loan?

The maturity is two years.

How is loan forgiveness calculated for PPP purposes?

The rules in Section 2(o) provide guidance on calculating the amount of loan forgiveness. The guidance requires that at least 75% of the loan proceeds must be used for payroll costs despite the statutory text which allowed for use of the funds for payroll, mortgage interest, lease payments and utility payments. The Rule formalizes the informal guidance that not more than 25% of the forgiveness can be used for rent, mortgage interest or utility payments. This is in keeping with the goal of keeping workers employed.

Are any businesses ineligible for the PPP loans?

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.

Section 120.110 of the Act provides guidance on which businesses are not eligible for the PPP loan. Below is a listing of the common businesses that will not qualify:

- Financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances);
- Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies under §120.111);
- Life insurance companies;
- Businesses located in a foreign country (business in the U.S. owned by aliens may qualify);
- Private clubs and businesses which limit the number of memberships for reasons other than capacity;
- Businesses primarily engaged in political or lobbying activities

Are nonprofit organizations eligible to apply for a PPP loan?

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.

Are foreign businesses eligible for the PPP loan?

No, businesses located in a foreign country are not eligible. Businesses in the U.S., owned by aliens, may however qualify.

When analyzing the retention credit, is it included in taxable income? If we're reducing payroll expense, then is it true that book income effectively increases, so a taxpayer would be paying tax at 21%?

For retention credit, it's a reduction in expense in the period the cash is actually received (e.g. one may accrue in April and then net in compensation expense when the cash is received).

Does the CARES Act address any book/tax differences related to the retention credit?

Under Section 2301(e) of the act, it states similar rules to Section 280C(a) shall apply. Section 280C(a) states no deduction is allowed for the portion of wages or salaries that are paid or incurred for the year for which certain employment credits are received. So from a tax standpoint, we get no deduction for the wages, and the credit does not create taxable income so the amount is a wash. From a GAAP standpoint, the credit would be a reduction to expense. Traditionally employment credits just reduce income tax liability and would run through the income tax expense line as a benefit. The retention credit here is applied against payroll taxes and is fully refundable – so presumably reduces compensation expense.

Does the CARES Act address any book/tax differences related to the SS deferral?

For the payroll tax deferral, we have a traditional timing difference. GAAP books the expense and liability in 2020. For tax, we take the deduction when paid.

May an Eligible Employer receive both the tax credits for the qualified leave wages under the FFCRA and the Employee Retention Credit under the CARES Act?

Yes, if an Eligible Employer also meets the requirements for the Employee Retention Credit, it may receive both credits, but not for the same wage payments.

Section 2301 of the CARES Act allows certain employer subject to a full or partial closure due to COVID-19 or experiencing a significant decline in gross receipts a tax credit for retaining their employees. This employee retention credit is equal to 50% of qualified wages (including allocable qualified health plan expenses) paid to employees after March 12, 2020 and before January 1, 2021, up to \$10,000 in qualified wages for each employee for all calendar quarters. However, the qualified wages for the Employee Retention Credit do not include the amount of qualified leave wages for which the employer received TAX credits under THE FFCRA.

May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and a Small Business Interruption Loan under the CARES Act?

Yes. However, if an Eligible Employer receives tax credits for qualified leave wages, those wages are not eligible as "payroll costs" for purposes of receiving loan forgiveness under Section 1106 of the CARES Act.

Has there been any guidance issued for PE companies related to any modifications to the affiliations rules so they become eligible for the PPP loan and loan forgiveness?

As of April 2, 2020, we have not received clear guidance but are expecting Treasury to come out with some new guidance for lenders. We haven't heard of any solid movement on the affiliation rule. This is on the Secretary level and he doesn't want any changes to benefit PE and VC. Prospects are unclear at this point.

Should we be charging our clients for consultations related to SBA loans and other stimulus packages available?

We should be paid by the client for consultative services. Additional language is being added to our SOW's, which can be found in the TORM Library.

Has guidance been issued on whether a consolidated "C" with multiple subs, each of which has less than 500 employees, receive one \$10mm loan or does the company have to apply for a loan for each sub?

There is an SBA affiliations test that applies (except for NAIC code 72 for the restaurant and hospitality industry). The guidance would therefore bunch together a consolidated group. Unless the client is in code NAIC 72, the company is eligible to apply for just one loan.

For SBA purposes, how is the number of employees calculated?

The SBA requires the calculation of the 500 employees to be made on a trailing twelve month average prior to the loan application. Total part time and full time employees are added up for each month, the 12 months are totaled and then divided by twelve.

For SBA purposes, does the employee count include part time employees?

The SBA requires the calculation of the 500 employees to be made on a trailing twelve month average prior to the loan application. Total part time and full time employees are added up for each month, the 12 months are totaled and then divided by twelve.

Are employees pursuant to a contract with a PEO (Professional Employee Organization) treated as employees for the employee count under a 7(a) loan?

Yes, employees that work for a company pursuant to a contract with an professional employee organization are treated as your employees for purposes of a 7(a) loan.

For clients that use professional employer organizations, temp agencies or leasing agencies to provide leased employees, is the amount paid to those PEOs and agencies included in the payroll cost? Additionally, are "leased" employees counted as FTEs?

Yes, employees that work for a company pursuant to a contract with an professional employee organization are treated as your employees for purposes of a 7(a) loan.

For SBA loan application purposes, how is an FTE defined?

(1) Look to the # of pay periods you have for the year. (2) Count the number of EE's for each of the pay periods from April 1, 2019 to March 31, 2020. (3) Add the counts for each of the pay periods together and divide by the number of pay periods.

FTE for rules of loan forgiveness: Rules applied under IRC 4980H according to the Affordable Care Act, which states a full time equivalent is anyone that works at least 30 hours per week. I would use 30 hours weekly as your guide for a FTE.

Is it correct that anyone terminated between 2/15 – 4/26 (30 days after enactment) is excluded from the reduction if they are re-hired by June 30? Does this also imply that anyone terminated after 4/27 and re-hired before June 30 is factored as a reduction during the covered loan period?

Yes; however, you must ensure that at least 75% of the proceeds are used for payroll costs during the 8 weeks.

For retirement benefits, is it when the benefits are paid (accounts funded), or can we “accrue” based on the 2019 actual allocation? Many clients do not/cannot prefund the employees’ accounts. It’s funded once the actual allocation is completed.

In order to determine the maximum loan amount, the Act refers to:

- the sum of—
- (aa) the product obtained by multiplying—
- (AA) the average total monthly payments by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made

The term payroll costs includes:

- (FF) payment of any retirement benefit;

The amounts paid during the period are the proper amounts to include in the calculation, irrespective of whether those amounts were accrued in the same or earlier periods.

Does the recently enacted CARES Act definition of employee include staffing/leased employees? For example, we pay a fee to a staffing company and they cover their benefits, etc.?

Yes, those individuals are included. All individuals employed on a full time, part-time or other basis. This included employees from Temp agencies.

The SBA loans refer to using FTE's to determine if the amount of potential forgiveness should be reduced. How many hours per week is considered for an FTE?

The ACA definitely set 30 hours as the standard for "full time employee" and when calculated FTE you sum all the hours for variable employees and convert them to FTE based on the 30 hours per week. ACA treats any person who holds a full time position as 1 FTE and then you do the math for variable employees and add the results.

If a company starts paying employees who used to work 40 hours only for 30 hours. Is that employee is still one FTE?

Yes; however, you will need to watch the payroll cost reduction rules if you pay them less for the reduced hours. Since the 40 hour employee = 1 FTE and the 30 hour employee = 1 FTE, there would not be a reduction.

Is a company eligible for both the SBA loan and retention credit?

Receiving an SBA loan disqualifies an otherwise eligible employer from taking advantage of the retention credit. In other words, it appears the disqualifier is receiving the loan itself and not receiving loan forgiveness. According to 2301(j), "If an eligible employer receives a covered loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act, such employer shall not be eligible for the credit under this section."

Is a company eligible for both the deferral of employer payroll taxes if the SBA loan is forgiven?

The deferral of employer payroll taxes is indeed not allowed if a SBA loan is forgiven under certain sections. But, loan forgiveness has no bearing on the retention credit – the retention is cut off by receiving the particular type of SBA loan noted above. According to 2302(a)(3), "This subsection shall not apply to any taxpayer if such taxpayer has had indebtedness forgiven under section 1106 of this Act with respect to a loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act, or indebtedness forgiven under section 1109 of this Act."

Is there any exception for PE or VC with regard to the 500 employee rule?

There is no exception for private equity or VC company's in the CARES act – the 500 employee rule applies to each applicant company. If there is an affiliated group, you must work through the published SBA affiliation rules to determine if the employees from related companies need to be grouped together in to one, or if they can stand alone as separate companies.

If participating in the PPP program, am I also eligible for the employer social security tax credit?

The law basically says that if you are participating in the PPP program then you are NOT eligible to participate in the employer social security tax 50% credit under the CARES act and you are NOT eligible to defer employer social security taxes to 2021 under the CARES act. I don't see any guidance or exception for the time period until the PPP loan proceeds are actually received. If you participate in the PPP loan program, then you will have to submit payroll taxes based on the ordinary and customary due dates without any deferral and without any 50% employer payroll tax credit.

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 (one percent) 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 percent 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 percent 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 percent of which is equivalent to eight weeks of payroll ($8 \text{ weeks} / 2.5 \text{ months} = 56 \text{ days} / 76 \text{ days} = 74 \text{ percent rounded up to } 75 \text{ percent}$). Limiting non-payroll costs to 25 percent 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.

What forms do I need and how do I submit an application?

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:

- payroll costs (as defined in the Act and in 2.f.);
- costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- mortgage interest payments (but not mortgage prepayments or principal payments);
- rent payments;
- utility payments;
- interest payments on any other debt obligations that were incurred before February 15, 2020; *and/or*
- 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.

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.

Are companies that have foreign business operations excluded from the 500 employee count?

A U.S. sub with a Foreign parent can apply for an SBA 7(a) loan but the employee count limit is connected. The employees in the foreign affiliate have to be grouped with the American applicant to see if they are over 500. There is an out depending on industry NAICS code.

When calculating the loan amount, are FICA and FIT withholding included?

When calculating loan amount, FICA (employee) and FIT withholding ARE included in the calculation, except to the extent they are from the covered period Feb. 15, 2020 - June 30, 2020. Any withholding amounts for items like federal or state income tax would be included in the salary or wage amount.

Are SBA loan terms the same for everyone?

Yes.

How will SBA loan amounts be forgiven?

The loan amounts will be forgiven as long as:

- The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the 8 week period after the loan is made; and
- Employee and compensation levels are maintained.

When can I apply for the SBA loan?

- Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Other regulated lenders will be available to make these loans as soon as they are approved and enrolled in the program.

Where can I apply for an SBA loan?

You can apply through any existing SBA lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. You should consult with your local lender as to whether it is participating. Visit www.sba.gov for a list of SBA lenders.

Who can apply for an SBA loan?

All businesses – including nonprofits, veterans organizations, Tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors – with 500 or fewer employees can apply. Businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries.

For this program, the SBA's affiliation standards are waived for small businesses (1) in the hotel and food services industries; or (2) that are franchises in the SBA's Franchise Directory; or (3) that receive financial assistance from small business investment companies licensed by the SBA. Additional guidance may be released as appropriate.

What documentation do I need to apply for an SBA loan?

You will need to complete the Paycheck Protection Program loan application and submit the application with the required documentation to an approved lender that is available to process your application by June 30, 2020. You will also need to provide your lender with payroll documentation.

How long will the PPP program last?

Although the program is open until June 30, 2020, we encourage you to apply as quickly as you can because there is a funding cap and lenders need time to process your loan.

Do I need to first look for other funds before applying to this program?

No. We are waiving the usual SBA requirement that you try to obtain some or all of the loan funds from other sources (i.e., we are waiving the Credit Elsewhere requirement).

How many loans can I take out under this program?

Only one.

For SBA loan purposes, what counts as payroll costs?

Payroll costs include:

- Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);
- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;
- State and local taxes assessed on compensation; and
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.

What can I use these loans for?

You should use the proceeds from these loans on your:

- Payroll costs, including benefits;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

How large can my loan be under the PPP program?

Loans can be for up to two months of your average monthly payroll costs from the last year plus an additional 25% of that amount. That amount is subject to a \$10 million cap. If you are a seasonal or new business, you will use different applicable time periods for your calculation. Payroll costs will be capped at \$100,000 annualized for each employee.

How much of my loan will be forgiven under the PPP program?

You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs. You will also owe money if you do not maintain your staff and payroll.

- **Number of Staff:** Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- **Level of Payroll:** Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019.
- **Re-Hiring:** You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

How can I request loan forgiveness under the PPP program?

You can submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.

When do I need to start paying interest on my loan under the PPP program?

All payments are deferred for 6 months; however, interest will continue to accrue over this period.

When is my loan due under the PPP program?

In 2 years.

Can I pay my loan earlier than 2 years under the PPP program?

Yes. There are no prepayment penalties or fees.

Do I need to pledge any collateral for a loan received under the PPP?

No. No collateral is required.

Do I need to personally guarantee a loan obtained through the PPP?

No. There is no personal guarantee requirement. ***However, if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges against you.***

Can guaranteed payments be included as "payroll costs" for purposes of the PPP loan?

There is no clear guidance. As a practical matter, especially knowing that applications need to be submitted immediately before the money runs out, would be to advise applicants to include the GPs as payroll costs but disclose this as part of the application. In terms of support, the statute defines the term payroll costs to include "salary, wage, commission, or similar compensation." Further, the \$100k limitation provides "the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period."

What do I need to certify when applying for an SBA loan?

As part of your application, you need to certify in good faith that:

- Current economic uncertainty makes the loan necessary to support your ongoing operations.
- The funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments.
- You have not and will not receive another loan under this program.
- You will provide to the lender documentation that verifies the number of full-time equivalent employees on payroll and the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight weeks after getting this loan.
- Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.
- All the information you provided in your application and in all supporting documents and forms is true and accurate. Knowingly making a false statement to get a loan under this program is punishable by law.
- You acknowledge that the lender will calculate the eligible loan amount using the tax documents you submitted. You affirm that the tax documents are identical to those you submitted to the IRS. And you also understand, acknowledge, and agree that the lender can share the tax information with the 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.

Are contractor payments treated as payroll for purposes of obtaining an SBA loan?

Under new guidance received, independent contractors are not included in the calculation for the loan.

Does a rental real estate business with no statutory employees have payroll for SBA loan application purposes by using the fees paid to a property management company?

The answer is really going to be one that falls back as a legal question related to contracts in place and probably not one that we can fully answer. It could come down to how the contract is written. Under new guidance received, independent contractors are not included in the calculation for the loan.

Does payroll costs include commissions and other amounts paid that are reported on a 1099 or does the independent contractor need to file its own 7(a) application?

Under new guidance received, independent contractors are not included in the calculation for the loan.

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

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan forgiveness.