



FAQ: Small Business PPP Loan

Disclaimer

This resource summarizes a very new and very complex set of laws. It represents our best understanding of the laws based on the information available at present, but they do not represent our advice and do not constitute an opinion on the law. The various federal departments will continue to issue guidance on these laws and the practical application thereof. We will update this document as quickly as possible to include such new information, however, ANYONE USING THIS RESOURCE MUST RELY ON SUITABLE FINANCIAL AND LEGAL COUNSEL IN MAKING ANY FINAL CHOICES.

Introduction

The programs and initiatives in the Coronavirus Aid, Relief, and Economic Security (CARES) Act that was just passed by Congress are intended to assist business owners (including sole proprietors and independent contractors) with the urgent economic needs they have right now. When implemented, there will be many new resources available for small businesses. But because the Act is so new, we don't yet understand all the details related to each of the resources. This document describes what we currently know – and don't know – so that you can make well-informed decisions on how to proceed.

What are the main loan programs in the CARES Act?

The two main loan programs are the **Paycheck Protection Program (PPP) Loan** and the **Economic Injury Disaster (EID) Loan**. The EID Loan includes an **Emergency Economic Injury Grant (“Emergency Grant”)** of up to \$10,000. The Emergency Grant does not need to be repaid and may be used for multiple purposes.

The remainder of this resource focuses on the PPP Loan exclusively. Fishing Partnership Support Services (FPSS) have prepared a separate FAQ resource on the EID Loan and Emergency Grant.

What is the primary purpose of the PPP Loan?

The main purpose of the loan program is to help small businesses **maintain payroll and retain workers**. As a result, businesses will be required to demonstrate that they have maintained payroll and retained workers to qualify for the maximum benefit of 100% loan forgiveness. The technical details of the loan are a little easier to understand if you keep this objective in mind.

How does the PPP Loan work?

The PPP Loan is more complicated than the EID Loan. It uses multiple steps and calculations to determine whether a business qualifies for the maximum benefit of 100% loan forgiveness.

Step 1: Calculate your average monthly payroll costs and employee headcount **before** the disaster occurred. The rules give you some flexibility on the specific *“reference period”* to use for the calculation.

Step 2: Apply for the loan. The maximum loan amount is 2.5 times the average monthly payroll costs calculated in Step 1.



Step 3: Select a *loan origination date*. This is an important date, because it starts the clock on an 8-week period (the “*covered period*”) when you must maintain payroll costs and headcount at comparable levels to those in the reference period to qualify for 100% loan forgiveness.

Step 4: Use the proceeds of the loan to pay your payroll costs for the entire 8-week covered period. There will likely be money left over if you received 2.5 times your average monthly payroll costs. Use the excess for other qualifying expenses (see question below, “[What are approved uses of the PPP Loan?](#)”). **Be careful to document and manage these costs.** At least 75% of the loan proceeds must be used for payroll costs; the rest can be used for the other qualifying expenses.

Step 5: Submit documentation to the lender at the end of the covered period to demonstrate you used the loan proceeds appropriately. 100% of the loan will be forgiven and considered tax-free income.

How can I use these rules and steps to my advantage?

Many businesses will approach the PPP Loan with the goal to obtain 100% loan forgiveness. The rules give businesses some flexibility in choosing the reference period. There is also some flexibility in choosing the origination date that starts the covered period. Make your choices carefully. There may be certain choices that allow you to align the payroll and headcount from the reference period more closely to your projected payroll and headcount for the covered period.

Some businesses will not be able to obtain 100% loan forgiveness but may still find the PPP Loan attractive because the interest rate is only 1% (see question below, “[What are the key provisions of the PPP Loan?](#)”).

What if I don’t follow these rules and steps?

The amount of loan forgiveness will be reduced if you didn’t maintain payroll and headcount during the covered period.

For example, if you do not maintain headcount, the forgiven amount will be reduced by the following fraction:

- $\text{Average headcount during the covered period} / \text{Average headcount during the reference period}$

And if you do not maintain payroll, the forgiven amount will be reduced by the following dollar amount:

- For each employee, the amount of any payroll reduction in excess of 25%

The amount of loan forgiveness will also be reduced by the amount you received as an EID Loan Emergency Grant (see question below, “[Can I apply for both an EID Loan and a PPP Loan?](#)”).

What if I bring back employees or restore wages?

Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after enactment of the CARES Act will not reduce the amount of loan forgiveness IF by June 30, 2020 the borrower eliminates the reduction in employees or reduction in wages.

What is included in payroll?



For employers, the most noteworthy items are the following:

- Salary, wage, commission, or similar compensation (on a gross basis, before any withholding).
- Payment for vacation, parental, family, medical, or sick leave.
- Payment required for the provisions of group health care benefits, including insurance premiums.
- Payment of any retirement benefit.
- Payment of state or local tax assessed on the compensation of the employee.

The rules for sole proprietors, independent contractors, and other self-employed individuals are less clear currently. We are awaiting more guidance from federal agencies. All they have said so far is that “payroll equals the sum of payments of any compensation that is a wage, commission, income, net earnings from self-employment, or similar compensation.”

What is excluded from payroll?

The most noteworthy items are the following:

- Cash compensation to an employee in excess of \$100,000. The first \$100,000 can be included, but not the amount above \$100,000. Non-cash compensation can be ignored, including retirement plan contributions and group health insurance benefits.
- The employer’s share of payroll taxes.
- Payments to independent contractors and sole proprietors.

Can I count sole proprietors and independent contractors as employees?

No – see question directly above. Only include individuals who are directly employed by your business and included in payroll. These individuals may be listed on your IRS Form 941 filing.

Can sole proprietors and independent contractors apply on their own?

Yes.

Can I count part-time employees?

Yes, but count them on a full-time equivalent (FTE) basis.

What are my options for the reference period for payroll?

Seasonal employers have the option of using the period from February 15, 2019 through June 30, 2019 or March 1, 2019 through June 30, 2019.

Non-seasonal employers have the option of using the previous 12 months or calendar year 2019.

New employers that weren’t in business from February 15, 2019 to June 30, 2019 should use the period from January 1, 2020 through February 29, 2020.

What are my options for the reference period for employee headcount?

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Established businesses can use the same period they chose for payroll. Or they can use the 12 completed calendar months prior to the date of the loan application.

New employers can use the number of calendar months they have been operational, if less than 12.

Once I have selected my reference periods, how do I calculate average monthly payroll costs and employee headcount?

For payroll, calculate your aggregate payroll costs across the entire reference period. Be sure to include/exclude the payroll items described above. Your IRS Form 941 may be helpful in determining the aggregate amount.

Once you have the aggregate payroll costs, convert the amount to an average monthly value. The divisor to use will be based on your chosen reference period:

- Divide by 4.5 if you selected February 15, 2019 through June 30, 2019.
- Divide by 4.0 if you selected March 1, 2019 through June 30, 2019.
- Divide by 12.0 if you selected the previous 12 months or calendar year 2019.
- Divide by 2.0 if you selected January 1, 2020 through February 29, 2020.

(Please note: currently we aren't sure whether you will need to do this conversion yourself, or the application instructions and process will do it for you.)

For employee headcount, calculate the average number of FTE employees per pay period for all pay periods that occurred within your chosen reference period.

How do I apply for a PPP Loan?

You must apply through an SBA-approved lender.

- Use the following link to view a list of the largest SBA-approved lenders in Massachusetts:
<https://www.sbalenders.com/top-sba-lenders-massachusetts/>
- Use the following link to view a list of other local SBA-approved lenders in Massachusetts:
https://www.sbalenders.com/bank-type/local-sba-lenders/massachusetts/?tevolution_sortby=bank-city

Keep in mind that lenders have just started to accept applications. The start date for small businesses and sole proprietorships was April 3. The start date for independent contractors and self-employed individuals is April 10.

Some lenders are up and running while others are not yet accepting applications. Those that are up and running are reporting backlogs and delays. Some lenders are saying that they are currently taking applications from existing customers only. Contact the lender to confirm.

Do all lenders use the same form?

No, lenders can create their own forms as long as they collect the information required by the SBA. They can also use electronic/online forms. Contact the lender for details.



What am I required to certify in the application?

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

- You were in business on February 15, 2020 and had employees or paid independent contractors.
- 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

Is the forgiven portion of the PPP Loan tax-free?

Yes.

Do I need to repay the portion of the PPP Loan that isn't forgiven?

Yes. See question below, "What are the key provisions of the PPP Loan?"

Will I be required to provide additional information to the SBA beyond the initial application?

Yes, it is likely the lender will request more information before making a loan decision. You may receive a call or email with a request to complete one or more forms. Please contact your FPSS Navigator if you need help with these forms.

How quickly will I get the PPP Loan?

We aren't sure. The SBA have said to expect a 2-3-week turnaround for a loan decision. But we have heard that the process could be slower.

What are approved uses of the PPP Loan?

Beyond payroll costs, discussed extensively above, other approved uses of the PPP Loan include:

- Interest on the mortgage obligation incurred in the ordinary course of business.
- Rent on a leasing agreement.
- Payments on utilities (electricity, gas, water, transportation, telephone, or internet).

Keep in mind that at least 75% of the loan proceeds must be used for payroll; the rest can be used for the other qualifying expenses.

What are the key provisions of the PPP Loan?

Some of the key provisions include:

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- A maximum loan amount of \$10 million.
- No personal guarantees or collateral required.
- Term of up to 2 years.
- Interest rate of 1.0%.
- No prepayment penalty.
- Deferral of up to 6 months (though interest will accrue during that time).

Can I apply for both an EID Loan and a PPP Loan?

Yes, applying for the EID Loan and Emergency Grant does will not prevent you from also applying for a PPP Loan. However, you will need to apply separately for each loan. Also – and importantly – the amount of the Emergency Grant you receive will reduce the amount of PPP Loan forgiveness you can obtain.

And you cannot use your EID Loan for the same purpose as your PPP Loan. As a result, you may wish to use the EID Loan and PPP Loan for different purposes. For example, use the EID Loan for non-payroll working capital needs, and the PPP Loan for payroll.

Could the PPP Loan limit my ability to collect expanded unemployment benefits under the CARES Act?

We aren't sure. We have asked authorities for clarification on how these different programs affect one another.

Where can I find more details on the PPP Loan?

It is important for you to be familiar with the details of the loan and grant before you apply. This includes details such as the interest rate, loan term, deferment options, etc.

One useful resource is from Massachusetts Senator Ed Markey's office, titled "*The Small Business Owner's Guide to the CARES Act:*" https://www.sbc.senate.gov/public/_cache/files/9/7/97ac840c-28b7-4e49-b872-d30a995d8dae/F2CF1DD78E6D6C8C8C3BF58C6D1DDB2B.small-business-owner-s-guide-to-the-cares-act-final-.pdf

Another useful resource is from CLA Connect, a tax and consulting business that works with FPSS, titled "*Comparison of EIDL and Paycheck Protection Programs:*" <https://www.claconnect.com/resources/articles/2020/comparison-of-eidl-and-paycheck-protection-programs>

Another good resource is from the US Chamber of Commerce, titled "*Coronavirus Emergency Loans – Small Business Guide and Checklist:*" https://www.uschamber.com/sites/default/files/023595_comm_corona_virus_smallbiz_loan_final.pdf