

Paycheck Protection Program (PPP) Updates, April 8, 2020 - Client Newsletter

RELATED ATTORNEYS

Frank Huttler III
Brian J. Yarzab

RELATED PRACTICE AREAS

Corporate & Business Law
Employment Law

Article
4.8.20

Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020. Just one week later, the U.S. Small Business Administration (SBA) launched the Paycheck Protection Program (PPP), an initiative conceived under the CARES Act to keep workers paid and employed for the duration of the outbreak of coronavirus disease 2019 (COVID-19).

Under the program, eligible small businesses and nonprofit organizations can apply for and receive loans of up to \$10 million from approved lenders for their payroll costs and certain other expenses. These loans are 100 percent guaranteed by the federal government and subject to deferment and forgiveness under certain circumstances, which are detailed below.

Due to the expeditious implementation of the program, both current and prospective applicants must stay abreast of the latest administrative guidance and regulations and other critical developments. Based on the most recent developments, here is a comprehensive overview of what we know so far. For the latest updates from the SBA, please refer to the “FAQ for Lenders and Borrowers,” which receives regular updates: <https://www.sba.gov/document/support-faq-lenders-borrowers>

Am I eligible?

You are eligible to receive a PPP loan if you are:

- A business or nonprofit organization with 500 or fewer employees who reside in the United States; and
- You were in operation on February 15, 2020; and

- You had employees or paid independent contractors.
- A sole proprietor or independent contractor.

Certain businesses in certain industries are eligible even with more than 500 employees, and certain self-employed individuals are also eligible.

How much can I borrow?

For most borrowers, the maximum loan amount for a PPP loan is equal to 2.5 times your average monthly payroll costs, but not more than \$10 million.

How do I calculate my “average monthly payroll costs”?

Most borrowers can calculate their average monthly payroll costs in this manner:

- First, add together all your payroll costs from either the last 12 months or the calendar year 2019.
- Then, subtract from this amount any cash compensation paid to an employee in excess of \$100,000 per year. (Don't include non-cash benefits.)
- Last, divide this amount by 12 to calculate your average monthly payroll costs.

What are my “payroll costs”?

For businesses and nonprofit organizations, payroll costs consist of:

- Salaries, wages, commissions, or similar compensation paid to employees who reside in the United States;
- Payments of cash tips or the equivalent;
- Payments for vacation, parental, family, medical, or sick leave;
- Allowances for separations or dismissals;
- Payments for group health care benefits, such as insurance premiums;
- Payments of retirement benefits; and
- Payments of state or local taxes assessed on the compensation of employees.

For independent contractors or sole proprietors, payroll costs consist of wages, commissions, income, or net earnings from self-employment or similar compensation.

Certain expenses, such as compensation paid to employees who reside outside of the United States and compensation paid to an individual employee in excess of \$100,000 per year, as prorated, are excluded from payroll costs.

Furthermore, because independent contractors can apply for and receive their own PPP loans, businesses can't include compensation paid to them in their payroll costs.

What are the loan terms of and conditions?

PPP loans mature after two years and bear a fixed rate of interest of one percent. All payments of principal and interest are deferred for a period of six months after the proceeds are disbursed, however, interest will continue to accrue over this period. Moreover, PPP loans are subject to forgiveness, as described below. No fees, no collateral, and no personal guarantees are required to apply for or to receive a PPP loan, and you are not required to be unable to receive credit elsewhere.

What can I use the loan for?

You can use the proceeds from a PPP loan for your:

- Payroll costs;
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Payments of interest (but not principal) on mortgage obligations;
- Payment of rent;
- Payments for utilities; and
- Payments of interest on debt obligations incurred before February 15, 2020.

The SBA requires that you use at least 75 percent of the PPP loan proceeds for payroll costs.

How much can I seek forgiveness for?

You can apply for and receive forgiveness of a PPP loan in an amount equal to the sum of certain costs incurred in the eight-week period after the proceeds are disbursed. These costs are limited to:

- Payroll costs;
- Payments of interest (but not principal) on mortgage obligations incurred before February 15, 2020;
- Payments of rent on leases in force before February 15, 2020;

- Payments for utilities (i.e., electricity, gas, water, transportation, telephone, or internet access services) that began before February 15, 2020.

The amount of forgiveness you can receive cannot exceed the principal amount of the loan and any accrued interest, and not more than 25 percent of this amount can be for non-payroll costs.

Furthermore, the amount of forgiveness you can receive is subject to reduction if you decrease the number of full time equivalent (FTE) employees on your payroll or if you decrease their compensation. However, if the decreases in number of employees or compensation occurred between February 15, 2020 and April 26, 2020, then the amount of forgiveness is determined without regard to these decreases if the decreases are eliminated not later than June 30, 2020.

Moreover, there are strict documentation requirements to remain eligible for forgiveness, so it's important to keep detailed records of these expenses.

When can I apply?

As of this date, if you are eligible for a PPP loan, then you can apply for one today. Keep in mind that PPP loans are made and approved on a first-come, first-served basis, so it's important to submit your application as soon as possible. Even though the application deadline is June 30, 2020, once all funds are exhausted, you will no longer be able to receive a PPP loan. The SBA limits the number of applications you can submit to just one, so you should consider an application for the maximum loan amount for which you are eligible.

What do I need to submit?

At a minimum, you will need to submit the application form (SBA Form 2483) and other documentation such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. If you do not have any such documentation, you must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount. You or an authorized representative must also submit a good faith certification with various statements, such as that current economic uncertainty makes your loan request necessary to support your ongoing operations, and that the funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments.

How do I find a lender?

You should contact your current lender to confirm their participation in the PPP. If not, you can find an eligible lender here: <https://www.sba.gov/paycheckprotection/find>

Different lenders may have different interpretations as to the requirements of the PPP, so it's important to engage in a discussion with your lender to confirm what is required.

