Paycheck Protection Program – Overview

(as of June 5, 2020)

The CARES Act creates the Paycheck Protection Program (PPP), a new loan program under section 7(a) of the Small Business Act, to be implemented by the Small Business Administration (SBA). Since the creation of the program in the CARES Act, two additional laws have made changes to PPP: the Paycheck Protection Program and Health Care Enhancement Act (became law on April 24) and the Paycheck Protection Program Flexibility Act (became law on June 5). Because PPP is a new program, SBA is still establishing some of its components and there are still grey areas surrounding certain requirements. We will continue to update our information as more guidance and rules are issued.

In summary:

- In general, agricultural producers and co-ops with 500 or fewer employees, including employees of businesses with which they have an affiliation, are eligible.
- Loan amounts are capped at $10 million, and interest rates are set at 1%.
- PPP loans can only be used for certain expenses, including payroll costs, interest payments on mortgages and other debt, rent, and utilities.
- Loan forgiveness on PPP loans is available.
- You apply for a PPP loan directly with an approved lender.
- The application period for PPP loans ends December 31, 2020.

Eligibility

Based on SBA rules released April 2 and 3, agricultural producers and co-ops with 500 or fewer employees – including employees of businesses with whom they have an affiliation – can access PPP loans, assuming no other factors limit eligibility.

Affiliations are determined on a business-by-business basis, based on one business having a majority control over another business. The rules for determining affiliations for PPP are located here.

Businesses with more than 500 employees may still be eligible for PPP loans, if they meet both of the following criteria:

1) the business has a maximum tangible net worth of $15 million or less, *and*
2) the business has an average net income after federal income taxes (excluding carry-over losses) for the two full fiscal years before the date of loan application of $5 million or less

Only employees whose principal place of residence is in the U.S. are included in the employee-count. According to the CARES Act, “individuals employed on a full-time, part-time, or other basis” count towards the 500-employee limit. From what we can tell, “other basis” includes seasonal employees. Independent contractors do *not* count towards a business’s employee-count.

PPP Loan Details

Applicants cannot apply for or use multiple PPP loans to cover the same expenses.

Loans have a five-year term, loan amounts are capped at $10 million, and the interest rate on any unforgiven amount is 1%.

Loan amounts are calculated to cover 2.5 times the average monthly payroll costs (measured by payroll expenses over the one-year period preceding loan origination date).

Loan funds must be spent on specific expenses, including payroll costs, interest on mortgage obligations (but not prepayments on interest) incurred before February 15, 2020, rent under lease agreements in force before February 15, 2020, utilities for which service began before February 15, 2020, and interest on any other debt incurred before February 15, 2020.

Payroll costs include employee compensation (including retirement benefits and employer costs related to group health care benefits, such as insurance premiums) and state and local payroll taxes, with an important caveat: Neither compensation for an employee whose principal place of residence is outside of the U.S. nor compensation for an employee whose annual salary is more than $100,000 (prorated as necessary) can be included as "payroll costs" for the purposes of PPP.

Please note: The June 5th law states that borrowers seeking loan forgiveness must spend at least 60% of loan funds on payroll costs (see below for more on loan forgiveness), easing the spending restriction for loan spending submitted for forgiveness. However, the law did not ease the restriction on loan amounts *not* being submitted for forgiveness or funds spent after the forgiveness spending timeframe ends. The non-forgiveness spending may be understood as still being governed by SBA's 75/25 rule, under which at least 75% of funds must be spent on payroll costs and no more than 25% spent on remaining approved expenses. There is a good chance the rule for non-forgiveness spending will be updated, and we will update our materials with any changes.

The borrower could be eligible for PPP loan forgiveness up to the full amount of the loan and accrued interest. To qualify for forgiveness, the borrower must spend at least 60% of loan funds on payroll costs and no more than 40% on mortgage interest, rent, or utilities. In general, the forgiveness amount shall be the sum of payroll costs, interest payments on mortgages, and rent and utility payments made within the first 24 weeks of loan dispersal. Forgiveness amounts will be reduced if borrowers reduce employment or if they reduce salaries and wages by more than 25 percent, unless borrowers can demonstrate they actively sought to fill open positions or had to reduce business operations due to specific COVID-19 workplace or customer safety requirements. If the reduction occurs, the forgiveness amount will be reduced by a ratio similar to the reduction in employment or reduction in compensation paid.

Loan payments are deferred until the date on which the lender receives from SBA the remittance for the amount of the borrower's loan that has been forgiven, but interest will accrue during the deferral period.

By taking a PPP loan, borrowers are making themselves ineligible for certain tax provisions extended to employers in other sections of the CARES Act.

Application Details

Loans can be issued until December 31, 2020. A loan applicant typically must meet specific application requirements for SBA business loans, but some of these are not required for PPP loans. For a PPP loan:

- Applicants do not need to demonstrate they are unable to obtain credit elsewhere
- Applicants do not need to provide a personal guarantee or collateral

How to Apply

You apply for a PPP loan directly with an approved lender. Approved lenders are existing SBA lenders and any federally insured depository institution, federally insured credit union, and Farm Credit System institution who are participating. Other regulated lenders will be available to make PPP loans once they are approved and enrolled in the program. You should consult with your local lender as to whether it is participating. Here is an SBA tool to help locate PPP lenders near you, although not all PPP lenders are necessarily on this SBA site.

Here is more information for borrowers provided by the Treasury Department, including loan application and loan forgiveness forms.