

Small Business Owners: CARES Act FAQ

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On Friday, March 27, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. The \$2.2 trillion stimulus package aims to provide comprehensive relief to individuals and businesses following the unprecedented impact of COVID-19 on our economy and our communities. Below are our answers to many questions related to the Paycheck Protection Program (PPP) under the Act.

Once further details are released, we will be providing the information you need to help you navigate your eligibility and options.

Who is this for?

- The Paycheck Protection Program of the CARES Act provides relief primarily to small and nonprofits with up to 500 employees.
- To be eligible, institutions must have been impacted by COVID-19 and in business as of February 15, 2020.
- Borrowers must certify that the funds will be used for approved purposes and that they are not receiving assistance for these items from another source.

What is the Paycheck Protection Program (PPP)?

- The \$349 billion Paycheck Protection Program expands loan eligibility under the Small Business Administration's (SBA) 7(a) program with the intention of assisting businesses with covering costs related to payroll (including healthcare and certain related expenses), mortgage interest, rent, leases, utilities and interest on existing debt.
- The PPP is part of an approximately \$2.2 trillion economic stimulus package known as the CARES Act.

Eligibility to Participate in the Paycheck Protection Program

What size business can qualify for a PPP loan?

- To qualify, the business must have no more than 500 employees (or, if applicable, meets the SBA's employee size standard for that industry)¹
 - The SBA typically counts anyone on the payroll as one employee, regardless of hours worked or temporary status.
 - The SBA typically considers the employees of affiliated businesses in the total calculation, so if the business and its affiliates in aggregate employ more than 500 people, the business typically won't qualify. The CARES Act creates exceptions for businesses with a NAICS code beginning with 72 (accommodation and food services) and no more than 500 employees, franchisees assigned a franchise identifier code by the SBA, and businesses backed by a small business investment company (SBIC).

What is a NAICS code? Where do I find the NAICS code for my business?

- The federal government uses the North American Industry Classification System (NAICS) to classify businesses by the type of economic activity in which they engage.
- NAICS codes are a series of six-digit numbers used to identify the industry in which a business operates.
- All businesses are required to include a NAICS code on their federal income tax returns.²
- Clients should consult their accountants and tax advisors as to which NAICS code they fall under.

Who is ineligible?

- Applicants who cannot fulfill the requirements on the loan application form ([Paycheck Protection Program Application Form](#)).
- Household employers (individuals who employ household employees such as nannies or housekeepers).
- Businesses identified in [13 CFR 120.110](#) (except for nonprofit organizations authorized under the ACT) including, but not limited to:
 - Financial businesses primarily engaged in lending
 - Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with loan proceeds
 - Businesses engaged in speculative activities

- Life insurance companies

I am a franchisee, can I still qualify?

- Yes. An eligible business operating as a franchise can apply for a PPP loan. Affiliation rules are also waived for franchises assigned a franchise identifier code by the SBA can qualify for the PPP.

If my company has funding from a private equity (PE) firm or other financial sponsor, can I still participate?

- PE portfolio companies typically have difficulty getting 7(a) loans because the SBA's affiliation rules may require the total number of employees across all of the sponsor's portfolio companies to be 500 or fewer.
- Clients with questions about the affiliation rules should also check with their accountants or attorneys.

How does the SBA determine whether two businesses or nonprofits are "affiliates?"

- The SBA considered two businesses to be affiliates if one controls or has the power to control the other, or if a third party or parties controls or has the power to control both.
- It does not matter whether control is exercised, so long as the power to control exists.
- Principles of affiliation are outlined in 13 CFR § 121.301(f), which we recommend all clients review carefully with their legal counsel.

What factors does the SBA consider when determining if two businesses or nonprofits are "affiliates"?

- The SBA has highlighted the following factors:
 - Affiliation arises when one person or entity controls more than 50% of a business's voting equity.
 - The SBA may treat options, convertible securities, and agreements to merge as if they have been exercised, when determining if control exists.
 - Affiliation arises when the officers, managing members, or partners of one business also control the management of another business.
 - Affiliation arises when there is an identity of economic interest between close relatives (*e.g.*, two spouses).

Do the affiliation rules apply to all businesses?

- No, the CARES Act waives the affiliation rules for:
 - Businesses with no more than 500 employees and assigned a NAICS code beginning with 72.
 - Franchises assigned a franchise identifier code by the SBA.
 - Businesses that receive financial support from an SBIC .
- Additionally, the SBA has published guidance that the relationship of a faith-based organization to another organization is not considered an affiliation if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion.
 - Loan applicants must make a reasonable, good faith determination that they qualify for this exemption.

If I already laid off workers, am I still eligible to apply for a PPP loan?

- Yes, but as a reminder, the forgivable portion is dependent on how many full-time equivalent (FTE) employees you have during the "covered period" (i.e. the first 8 weeks of the loan) compared to the base period (February 15, 2019–June 30, 2019; non-seasonal employers may elect to use January 1, 2020–February 29, 2020 instead).

Are these loans also available for nonprofits?

- Yes. As long as they meet all of the SBA's criteria.

Operations of the Paycheck Protection Program

What can the loan be used for?

- Loans are to be used for payroll costs (excluding amounts above a prorated annual salary of \$100,000 for employees who make more than that amount), mortgage/debt interest, rent and utilities and refinancing an EIDL made between January 31, 2020 and April 3, 2020.³

What is the maximum size of the loan?

- The maximum loan amount is the lesser of 2.5 times the business's average monthly payroll costs and \$10 million.
- For non-seasonal employers, average monthly payroll is the average total monthly payments for payroll during 2019 (per the application).

- For seasonal employers, average monthly payroll is the average total monthly payments for payroll for the period from February 15, 2019–June 30, 2019 (or March 1, 2019–June 30, 2019, at the election of the borrower).
- For businesses that were not in operation during February 15, 2019–June 30, 2019, average monthly payroll is the average total monthly payments for payroll for the period from January 1, 2020–February 29, 2020.

How are payroll costs calculated?

- The CARES Act defines payroll costs as:
 - The compensation of an employee (whose principal residence is in the United States), including:
 - Salary, wage, commission or other compensation (not to exceed \$100,000 per year, as prorated for the covered period).
 - Cash tip or equivalent
 - Payment for vacation, parental, family, medical or sick leave (unless the employer receives a credit under the Families First Act)
 - Allowance for dismissal or separation
 - Group healthcare benefits, including insurance premiums
 - Retirement benefits
 - State/local payroll taxes (not federal payroll taxes including items like Social Security and Medicare)
- For an independent contractor or sole proprietor: wage, commissions, income, or net earnings from self-employment or similar compensation (not to exceed \$100,000 per year, as prorated for the covered period).
- Clients should work with their accountants to calculate their payroll costs.

Is there a limit on the amount of compensation I can include in my payroll costs?

- Yes. When calculating average payroll costs, an employer may not consider any amounts paid as compensation to an employee in excess of \$100,000 per year, as prorated for the covered period, or any compensation of an employee whose principal place of residence is outside of the United States.

Is there a loan forgiveness provision under the PPP?

- Yes. There is the potential for the loan principal (and interest accrued thereon) to be forgiven up to the amount spent on payroll costs, mortgage interest, rent and/or utilities during the eight weeks after the issuance of the loan.
- Mortgages, leases and service contracts must have originated prior to February 15, 2020, for payments to be eligible.
- No more than 25% of the forgivable amount may be used for non-payroll expenses.
- The amount of the loan forgiveness will be reduced if there is a reduction in the number of employees or wages in excess of 25% of total wages during the period.

What will be the interest rate of the loan?

- The rate on all PPP loans is 1.0% per year.

What will be the term of the loan?

- The maturity for all PPP loans is two years.
- You will not have to make any payments for six months following the date of disbursement of the loan.

May I repay the loan in less than two years?

- Yes, there is no prepayment penalty.

What fees are associated with the loan?

- The SBA waives all SBA guaranty fees, including upfront and annual servicing fees.
- Lenders may not collect fees from the applicant but will receive a processing fee from the SBA of between 1%–5% of the loan amount, depending on its size.
- If an agent assists the borrower, the lender will compensate the agent out of the fee it receives from the SBA, at a rate of 0.25%–1% of the loan amount, depending on its size.

Accessing the Paycheck Protection Program

How do I gain access to the PPP?

- Clients should work with their existing SBA lenders.

- If the client's bank was not previously an existing SBA lender, they should still confirm with the lender to see if they will be participating in the PPP as the Department of Treasury also authorized most federally insured depository institutions, federally insured credit unions, and Farm Credit System institutions to extend loans under the PPP.

What do I need to apply for a PPP loan?

- Clients should expect that many businesses will be applying for these loans and the application site may be overloaded.
- Applicants must submit SBA Form 2483 ([Paycheck Protection Program Application Form](#)). Note: While the SBA guidance directs applicants to use this form, it is not clear how lenders will be accepting this form.
- Applicants will also be required to submit payroll documentation along with their application, such as payroll processor records, payroll tax filings, Form 1099-MISC, or income and expenses from a sole proprietorship.
 - For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.
- The Department of the Treasury has released an information sheet for interested [borrowers](#). We encourage all clients to work closely with their accountants and other advisors to prepare their applications and supporting documentation.

What will I be required to certify?

- On the application, an authorized representative of the applicant will be required to certify a number of things in good faith (please see the [application](#) for a full list) but a few to note:
 - The borrower was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.
 - Current economic uncertainty makes the loan necessary to support the borrower's ongoing operations.
 - The funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments; applicant may be held legally liable for knowingly using funds for unauthorized purposes.
 - From the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.

What is the deadline to apply?

- The CARES Act creates a deadline of June 30, 2020 to apply for PPP loans.
- Notwithstanding the June 30 deadline, the total amount of PPP loans the Act authorizes for the entire country is \$349 billion, and funds will be loaned on a first-come, first-served basis.

Other considerations

Can I have both a PPP loan as well as an Economic Injury Disaster Loan from the SBA?

- A business may borrow an additional amount (but not in excess of \$10 million total) to refinance an Economic Injury Disaster Loan (EIDL) it received from the SBA between January 31, 2020-April 3, 2020. A business may not receive a PPP loan and an EIDL for the same purpose.

What impact does a PPP loan have on my ability to qualify for other forms of relief under the CARES Act?

- The CARES Act creates a special payroll tax credit to encourage businesses affected by COVID-19 to keep staff on payroll.
- The CARES Act also allows businesses to defer the payment of employer payroll taxes they incur between March 27, 2020-December 31, 2020.
- A business that receives a PPP loan is not permitted to claim the employee retention credit, and a business that receives a PPP loan *and* has a part of it forgiven is not eligible for the payroll tax deferral.
- Clients should discuss with their accountants and tax advisors which of these forms of relief make the most sense for their businesses.

If a business applies for a loan under the PPP, will it have issues getting additional loans/grants from other programs?

- There is no guidance in the CARES Act on this issue; this will likely depend on the terms and conditions of the outside loans and grants.

Do I need to pay my mortgage? Rent? Utilities? Credit card?

- Yes. The loan is meant to help small business owners cover their expenses. However, check with your lender/landlord to see if any federally or state-mandated debt/rent relief applies to you.

How will this impact my credit?

- There are no personal guarantees or collateral required for a PPP loan, so participation in this program generally should not adversely impact your credit.

Will my information be subject to the Freedom of Information Act (FOIA)?

- Subject to certain exceptions, the SBA must supply information reflected in agency files and records to a person requesting it.
- Information about approved loans that will be automatically released includes, among other things, the borrower's name (and the names of its officers, directors, stockholders or partners), the amount of the loan, its purpose in general terms and the maturity.
- Proprietary data on a borrower would not routinely be made available to third parties.

How can I learn more?

- For additional information, please visit:
 - The U.S. Treasury [CARES website](#), which also includes information for [borrowers](#) as well as an [application](#).
 - U.S. Chamber of Commerce [Combatting the Coronavirus website](#), including its [Emergency Loans Small Business Guide and Checklist](#).
 - SBA website for additional guidance on the PPP, if needed, through notices and a program guide.

The information above is based on the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) and is believed to be accurate as of 4 p.m. April 4, 2020.

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