

# PAYCHECK PROTECTION PROGRAM

## FREQUENTLY ASKED QUESTIONS

*The following is a compilation of frequently asked questions on the Paycheck Protection Program (“PPP”) under the Coronavirus Aid, Relief, and Economic Security Act (the “Act”). The foregoing questions are those we have received, together with questions available from the Small Business Administration (“SBA”), the Department of Treasury and the U.S. Chamber of Commerce.*

### ELIGIBILITY AND AFFILIATION RULES

#### 1. What types of businesses and entities are **eligible** for a PPP loan?

- Businesses and entities operational on February 15, 2020.
- Small business concerns, as well as any business concern, if such businesses employ 500 or less employees or if such businesses meet the applicable SBA size standard.
- Tribal business concern, if such businesses employ 500 or less employees or if such businesses meet the applicable SBA size standard.
- Sole proprietors, independent contractors and eligible self-employed individuals.

#### 2. What types of **nonprofits** are eligible?

- 501(c)(3) and 501(c)(19) organizations, if such businesses employ 500 or less employees or if such businesses meet the applicable SBA size standard.

#### 3. What does the **500 employee** threshold include?

- All employees: full-time, part-time and any other status.

#### 4. Are **faith-based** organizations eligible?

- Yes. The SBA issued guidance that all faith-based organizations are eligible to apply.

#### 5. Are **foreign-owned** businesses eligible to apply?

- There is nothing in the Act that makes a foreign-owned business ineligible, and the pre-existing SBA regulations specifically allow most forms of foreign ownership as long as the borrower is located in the U.S. The preliminary PPP Borrower Application, however, contained a certification that seemed to disallow businesses with more than 20% foreign owners. The final Borrower Application has been corrected, so most small businesses operating in the U.S. that have foreign ownership are eligible for a PPP loan.

#### 6. I pleaded **guilty to a felony crime** a very long time ago. Am I still eligible for the PPP?

- Yes. Businesses are only ineligible if an owner of 20 percent or more of the equity of the applicant is presently incarcerated, on probation, on parole; subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or, within the last five years, for any felony, has been convicted; pleaded guilty; pleaded nolo contendere; been placed on pretrial diversion; or been placed on any form of parole or probation (including probation before judgment).

#### 7. Please discuss how this applies to **municipalities**.

- Municipalities are not eligible to apply for a PPP loan.

#### 8. What are the **affiliation** rules?

- Most applicants will be subject to “affiliation rules” per SBA regulations.
- All affiliated entities of the applicant will be included in determining the small-business size.
- Affiliated entities:
  - Ownership: entities that own 50% or more of applicant’s voting stock or minority owners that control applicant’s actions by the board of directors or shareholders.

- Common Management: entities that share the same officers, managing members or partners who control the management of the applicant.
- Options, Agreements, Convertible Securities: entities that have such and the rights related thereto that would result in its control of the applicant.
- The SBA has discretion to deem several other relationships between entities as “affiliations” based on weighing several factors, including common control, common economic interests and common ownership.

**9. Are there exceptions to the affiliation rules under PPP?**

- Yes, affiliation rules are waived with respect to the eligibility of:
  - Any business concern with no more than 500 employees at each physical location that is assigned a NAICS code beginning with 72;
  - Franchises that are approved on the SBA’s Franchise Directory; and
  - Any business concern that receives funding from a Small Business Investing Company licensed under the Small Business Investment Act of 1958.

**10. Are lenders required to make an independent determination regarding applicability of affiliation rules to borrowers?**

- No. It is the responsibility of the borrower to determine which entities (if any) are its affiliates and determine the employee headcount of the borrower and its affiliates. Lenders are permitted to rely on borrowers’ certifications.

**11. Are borrowers required to apply SBA’s affiliation rules?**

- Yes. Borrowers must apply the affiliation rules set forth in SBA’s Interim Final Rule on Affiliation. A borrower must certify on the Borrower Application Form that the borrower is eligible to receive a PPP loan, and that certification means that the borrower is a small business concern, meets the applicable SBA employee-based or revenue-based size standard, or meets the tests in SBA’s alternative size standard, after applying the affiliation rules, if applicable. SBA’s existing affiliation exclusions apply to the PPP, as discussed above.

**12. The affiliation rule based on ownership states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?**

- No. If a minority shareholder in a business irrevocably waives or relinquishes any existing rights, the minority shareholder would no longer be an affiliate of the business (assuming no other relationship that triggers the affiliation rules).

**APPLICATION AND DOCUMENTATION**

**1. What information do I need to provide with the loan application?**

- 2019 IRS Quarterly 940, 941 or 944 payroll tax reports.
- Payroll reports for a twelve-month period (ending on your most recent payroll date), which will show the following information:
  - Gross wages for each employee, including officer(s) if paid W-2 wages.
  - Paid time off for each employee.
  - Vacation pay for each employee.
  - Family medical leave pay for each employee.
  - State and local taxes assessed on an employee’s compensation.
- 1099s for independent contractors for 2019.
- Documentation showing total of all health insurance premiums paid by the company owner(s) under a group health plan.
  - Include all employees and the borrower’s owners.

- Document the sum of all retirement plan funding that was paid by the borrower’s owner(s) (do not include funding that came from employees out of their paycheck deferrals.)
  - Include all employees and the borrower’s owners.
  - Include 401K plans, Simple IRA, SEP IRA’s.

**2. The Paycheck Protection Program Interim Final Rule states that lenders must “confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower’s application.” Does that require that the lender replicate every borrower’s calculations?**

- No. Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower must attest to the accuracy of those calculations. Lenders are expected to perform a good faith review, in a reasonable time, of the borrower’s calculations and supporting documents concerning average monthly payroll cost. The level of diligence by a lender should be informed by the quality of supporting documents supplied by the borrower. Minimal review of calculations based on a payroll report by a recognized third-party payroll processor, for example, would be reasonable.
- If lenders identify errors in the borrower’s calculation or material lack of substantiation in the borrower’s supporting documents, the lender should work with the borrower to remedy the error.

**3. May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?**

- Yes. However, the borrower should bear in mind that, as the Borrower Application Form indicates, only an authorized representative of the business seeking a loan may sign on behalf of the business. An individual’s signature as an “Authorized Representative of Applicant” is a representation to the lender and to the U.S. government that the signer is authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant’s equity, contained in the Borrower Application Form. Lenders may rely on that representation and accept a single individual’s signature on that basis.

**4. Are lenders permitted to use their own online portals and an electronic form that they create to collect the same information and certifications as in the Borrower Application Form, in order to complete implementation of their online portals?**

- Yes. Lenders may use their own online systems and a form they establish that asks for the same information (using the same language) as the Borrower Application Form. Lenders are still required to send the data to SBA using SBA’s interface.

**5. I filed or approved a loan application based on the version of the PPP Interim Final Rule published on April 2, 2020. Do I need to take any action based on the updated guidance?**

- No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications from the SBA.

**6. Are PPP loans for existing customers considered new accounts for Rule CDD purposes? Are lenders required to collect, certify, or verify beneficial ownership information in accordance with the rule requirements for existing customers?**

- If the PPP loan is being made to an existing customer and the necessary information was previously verified, you do not need to re-verify the information.
- Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender’s risk-based approach to BSA compliance.

**7. What other certifications might a lender require?**

- The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations.
- The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments.

- Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here.
- From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for here (*Note: There is an opportunity to fold emergency loans made between Jan. 31, 2020 and the date this loan program becomes available into a new loan*)

#### 8. Will lenders apply the “credit elsewhere test”?

- No, this test is waived. For information purposes, this analysis determines whether the borrower has the ability to obtain some or all of the requested loan funds from alternative sources without causing undue hardship. **Again, lenders will not apply this test for PPP loans.**

### LOAN AMOUNT AND TERMS

#### 1. How is the **loan size** determined?

- Depending on your business’s situation, the loan amount will be calculated in different ways. The maximum loan amount is \$10 million.
  - **If you were in business February 15, 2019 through June 30, 2019:** Your maximum loan is 2.5 times your average monthly payroll costs during that time period. If your business employs seasonal workers, you can opt to choose March 1, 2019 as your time period start date.
  - **If you were not in business between February 15, 2019 through June 30, 2019:** Your maximum loan is 2.5 times your average monthly payroll costs between January 1, 2020 and February 29, 2020.
  - **If you took out an EIDL between February 15, 2019 and June 30, 2019** and you want to refinance that loan into a PPP loan, you would add the outstanding EIDL loan amount to the payroll sum.

#### 2. What is the **term** of the loan?

- Two years.

#### 3. What is the **interest rate**?

- 1%

#### 4. What **security** is required?

- Until June 30, 2020, there is no collateral or personal guarantee requirement.

#### 5. Are there **fees** associated with the loan?

- Zero loan fees, zero prepayment fee (SBA will establish application fees caps for lenders that charge).

#### 6. Can I seek **deferral**?

- All payments are deferred for at least 6 months; however, interest will continue to accrue over this period. SBA Lenders may extend this deferment for up to 1 year.

### PAYROLL COSTS AND PERMITTED USES

#### 1. What **costs are eligible** for payroll?

- Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent).
- Payment for vacation, parental, family, medical or sick leave.
- Allowance for dismissal or separation.
- 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 employees.

#### 2. What **costs are not eligible** for payroll?

- Employee/owner compensation over \$100,000.
- Taxes imposed or withheld under Chapters 21, 22 and 24 of the Internal Revenue Code.
- Employees whose principal residence is outside of the U.S.

- Qualified sick and family leave for which credit is allowed under the Families First Coronavirus Response Act.

3. For **compensation over \$100,000**, the Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?

- No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:
  - employer contributions to defined-benefit or defined-contribution retirement plans;
  - payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
  - payment of state and local taxes assessed on compensation of employees.

4. What if an eligible borrower contracts with a **third-party payer such as a payroll provider or a Professional Employer Organization (PEO)** to process payroll and report payroll taxes?

- The SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

5. Should payments that an eligible borrower made to an **independent contractor or sole proprietor** be included in calculations of the eligible borrower's payroll costs?

- No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

6. How should a borrower account for **federal taxes** when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

- Under the Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax. For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.

7. What are **allowable uses** of loan proceeds?

- Payroll costs (as noted above).
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums.
- Employee salaries, commissions, or similar compensations (see exclusions above).
- Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation).
- Rent (including rent under a lease agreement).
- Utilities.
- Interest on any other debt obligations that were incurred before the covered period.

## **LOAN FORGIVENESS AND REDUCTIONS IN LOAN FORGIVENESS**

### **1. How is the **forgiveness** amount calculated?**

- Indebtedness will be forgiven, up to the principal amount of the loan, in an amount equal to the sum of payments made during the 8-week period after the origination of the loan for costs in connection with payroll costs, utilities, rent and interest on mortgage obligations, as defined by the law.
  - Recent guidance published by the SBA limits the loan forgiveness in connection with non-payroll costs to 25% of the total indebtedness to be forgiven under the program.
  - Total indebtedness forgiveness will also be reduced based on certain reductions of employees and reductions of employees' wages (discussed below).

### **2. Are there any **tax implications** as a result of loan forgiveness?**

- Amount forgiven WILL NOT be included in gross income for tax purposes.

### **3. How do I **get loan forgiveness**?**

- You must apply through your lender for forgiveness on your loan.

### **4. What **documentation** is required for loan forgiveness calculations?**

- Verification of the number of employees and pay rates;
- Verification of payments on covered mortgage obligations, lease obligations and utilities; and
- Certification that the documentation provided is true and that the amount forgiven was used in accordance with the program guidelines.

### **5. What happens **after the forgiveness** period?**

- Any loan amounts not forgiven are carried forward as an ongoing loan, with a maximum loan term of 2 years, at a maximum interest rate of 1%.
- Principal and interest will continue to be deferred, for a total of 6 months to a year after disbursement of the loan.

### **6. How could loan **forgiveness be reduced**?**

- The amount of loan forgiveness is reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees, as more fully discussed below.

### **7. Reduction based on **reduction of number of employees**, is calculated as follows:**

- Payroll cost times average number of full-time equivalent employees (FTEs) per month beginning on loan origination divided by:
  - Option 1: Average number of FTEs per month from February 15, 2019 to June 30, 2019.
  - Option 2: Average number of FTEs per month from January 1, 2020 to February 29, 2020.
  - For seasonal employers: Average number of FTEs per month from February 15, 2019 or March 1, 2019 (decided by applicant) to June 30, 2019.

### **8. Reduction based on **reduction in salaries**, is calculated as follows:**

- Payroll cost minus for any employee who did not earn during any pay period in 2019 wages at an annualized rate more than \$100,000, the amount of any reduction in wages that is greater than 25% compared to their most recent full quarter.

### **9. 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 on April 26, 2020 shall not reduce the amount of loan forgiveness IF by June 30, 2020, the borrower eliminates the reduction in employees or reduction in wages.



## **OTHER SBA LOANS**

### **1. Can I get more than one PPP loan?**

- No, an entity is limited to one PPP loan. Each loan will be registered under a Taxpayer Identification Number at SBA to prevent multiple loans to the same entity.
- Businesses can also apply for Economic Injury Grant and Economic Injury Disaster Loan (EIDL). The EIDL has to be repaid over time, interest rate is up to 3.75% (up to 2.75% for non-profits), and the loan, other than the first \$10,000 advance, cannot be forgiven.
- If a business has received a EIDL, the business can apply for a PPP loan. In fact if the business used your EIDL loan for payroll purposes, you can refinance it with the PPP loan (which is advantageous because a portion of that loan can be forgiven)

### **2. How does the PPP loan coordinate with SBA's existing loans?**

- Borrowers may apply for PPP loans and other SBA financial assistance, including Economic Injury Disaster Loans (EIDLs), 7(a) loans, 504 loans, and microloans, and also receive investment capital from Small Business Investment Corporations (SBICs). However, you cannot use your PPP loan for the same purpose as your other SBA loan(s). For example, if you use your PPP to cover payroll for the 8-week covered period, you cannot use a different SBA loan product for payroll for those same costs in that period, although you could use it for payroll not during that period or for different workers.

### **3. How does the PPP loan work with the temporary **Emergency Economic Injury Grants** and the Small Business Debt Relief program?**

- EIDL recipients and those who receive loan payment relief through the Small Business Debt Relief Program may apply for and take out a PPP loan as long as there is no duplication in the use of funds.