

CARES FAQ

Is there a max liquidity for a business that would disqualify a business to apply for a PPP loan. Does the business have to first lose reserves?

There's no express requirement that you have to exhaust any assets before being eligible and you don't have to show that you've gone elsewhere for other forms of credit and been denied to be eligible for these loans; however, the all borrowers must assess their economic need for a PPP loan. Borrowers must take into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. Treasury Secretary Steven Mnuchin indicated that the intent of the PPP was not for companies with access to "plenty of liquidity," even though the PPP expressly waived any requirement to have credit elsewhere or for collateral or personal guarantees.

Does an employer have to demonstrate they have suffered a loss of income or have other impacts do to help crisis to qualify?

The PPP Loan does not have any requirement, but all borrowers must assess their economic need for a PPP loan. Borrowers must take into account their current economic activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.

Will your application for the PPP program be affected if one of your employees chooses to take a leave of absence?

In this case, they're still included as your employee count for the purposes of applying for the loan, but it could affect the loan forgiveness. To determine eligibility for the loan, borrowers may use their average employment over the previous 12 months or the calendar year 2019. If you have a seasonal business, you may use the period between February 15, 2019 or March 1, 2019 and June 30, 2019.

If a business was not in business from February 15, 2019 to June 30, 2019, it may use the average monthly payroll costs for the period January 1, 2020 to February 29, 2020. Independent contractors are NOT included in the employee count.

CARES FAQ

If we already applied for emergency EIDL. Can we still apply for payroll protection program?

Yes, you can apply to both. If you get the emergency EIDL and then subsequently get the paycheck protection loan, you can roll the EIDL loan into your overall financing - basically refinance the PPP loan. So there's no prohibition on you applying for a PPP loan if you've already applied for the EIDL alone.

And again, even if you get approved under the EIDL emergency loan, you can take that first while you're still waiting on the PPP and then roll them all together. Or you can apply to both right now and wait and see which comes back first and choose which one to take based on the loan terms that are provided by your lender.

Should I pay an employee even when I'm not working to keep them employed versus letting them go. Also, on that note, do we pay a full 40-hour wage, even if the employees are not physically working under the payroll protection?

The CARES Act does not expressly prohibit paying employees who are not working, and there is an argument that this was the precise purpose of the PPP. However, conflicting definitions in the CARES Act suggest that the loan may not be forgiven if the employees are being paid not to actually work. Because of this, companies should find some work for employees to perform in the interim, even if it is work not traditionally performed by such employees.

To avoid reductions in total loan forgiveness, during the 8-week covered period employers should seek to have on their payrolls the same number of full-time equivalent employees (FTEEs) as they did during whichever choice period they choose as a comparison (February 15, 2019 – June 30, 2019 or January 1, 2020 – February 29, 2020). Achieving this objective could involve hiring previously terminated employees or rehiring/reinstating employees subject to layoffs, furloughs, and/or reductions in pay/hours.

Additionally, if an employee's pay level was reduced during the 8-week covered period by more than 25% in comparison to the average wage earned by the employee during the most recent full quarter in which the employee was employed, the employer should restore the wages to within 25% or risk having to reduce the level of forgiveness by the excess of the 25% reduction.

CARES FAQ

Can paycheck protection loans be used to retain contract workers provided by a staffing agency?

Wages or compensation paid to staffing companies for workers may be considered payroll costs under the PPP. However, sums paid to independent contractors are not part of payroll costs.

If a company is a subsidiary of a larger company in another country. Do they still qualify for the PPP loan?

It is our understanding that businesses owned by foreign investors/businesses may be eligible and meet the SBA's affiliation rules which will consider "all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit." Additionally, the funds from the PPP loan can only be used for employees whose principal place of residence is in the United States.

With that being said, do businesses need a unique EIN number?

Unclear. One issue is that a lot of these decisions are going to be made by the bank. Unfortunately, the SBA and the federal government don't have the capacity to answer every detail question, so essentially what they've said is that business should just try and apply. The lender will be dependent on the information the business owners are providing.

How up-to-date do you have to be with your taxes in order to apply for an EIDL?

No, applications will still be accepted. In addition, they're extending the tax return deadlines.

The deadline for submission of the corporate tax returns was in March. When you actually fill out the application, they're asking for your revenue for the last 12 months till January 30th, so they are not really asking for a tax return on those. They are just really asking for your good faith reporting of what your revenues were. So you will not have to have your tax returns filed for 2019 for that for the disaster loan or for the PPL.

CARES FAQ

What if we don't have work for the employees; do we just pay them to not do work so that we can get the loan forgiven?

That's really the planning businesses need to do. The question remains, is there something else you can get them to do? That's really the question. So for construction, it's tough right, maybe there is something that they could be doing that perhaps the company has put on the back burner. Maybe they can have them work remotely and continue to develop some sort of plans for when they start up again. Is there's something they could be doing on-site that allows them to socially distance?

Businesses are going to have to pivot and be creative about what they do for these employees. Companies can always put their people in place to just clean-up, organize their inventory, organize their plant and equipment. Try to be creative while still being in compliance with the stay-at-home orders.

However, there is no express requirement that employees be working.

What can the PPL be used for? It's recommended for payroll, but can it also be used for insurance payment, social security taxes, travel expenses or the employee's vehicle leases?

The statute and guidance is clear that the loan can be only used for payroll costs, rent, interest on mortgage payments, and interest on debt obligations that existed on February 15, 2020. However, in order to maximize the amount of loan forgiveness 75% of the loan has to be used for payroll costs.

The loan is 2.5 times your average monthly payroll. The idea behind the loan is to prevent people from going on unemployment. In addition to the payroll, which is the major piece of the loan that will determine whether or not the loan will be forgiven, you can also pay interest on mortgages, rent, and utilities. There's certain things that it will cover. If you decide not to bring back the full head count there will be a portion of the loan that will not be forgiven. You'll have to repay any unforgiven amount over the two-year term at a 1% interest.

CARES FAQ

Is PPP a first-come first-serve basis?

Yes. The federal government is under a lot of pressure to keep the program open. However, do not waste any time in terms of applying; there is an urgency to it.

How would the loan calculations apply for those who have seasonal work? Do you have any recommendations on how they could better show that and what that might look like?

The PPL looks back at your payroll over the last fiscal year, for most employers that will be January to December 2019. Look to your full year of payroll expenses. The application will help walk you through these calculations. What they're doing is taking the last fiscal year. If you've already reported your 2019 tax returns, take the total payroll and you divide it by 12 and then you multiply it by 2.5. That's the maximum of what you would receive. If you have seasonal worker these calculations will be included in the full year. The only way that could potentially affect you is if you weren't in business for a full year last year.

The most important thing is to apply with your bank. Your bank will provide you with all of the information that you need to submit. It's understandable to want all of the detail, but it's constantly changing. Don't wait to apply because you're not clear about the program.

Does payroll assistance cover owners or employees of the company?

As long as it's reported on a W2. If you reported as a K1 then again you want to talk to your bank to get more clarity. Some business owners don't pay themselves a salary. However, some bankers have still accepted it. The program is silent on it.

Part of the bill incentivizes people to stay unemployed. What do I do if I let somebody go, but now they're getting really good benefits and they don't really want to come back to work? I want to get the loan forgiven. Do I just hire someone else?

As long as your head count is the same, you're fine. You don't have to hire back the same workers.

CARES FAQ

What about Schedule C businesses, sole proprietors and independent contractors?

Schedule C - can apply. Those that have an LLC or payments issued under K1 should talk with their individual banks.

Could business just apply for the 10,000 grant without having to apply for an EIDL loan or the PPP loan either?

No, businesses must actually apply for an EIDL loan in order to receive the grant. However, they do not have to accept the loan. They're not going to give everybody \$10,000. They are basically going to make that distribution based on some other calculation. However, there's really no reason not to apply.

If you are not in economic uncertainty right now, but maybe in a month or two. Should you still apply?

Businesses should start the application process as soon as possible. There have been some hiccups and some logistics issues with the government, so, it would be wise for businesses to be at the front of the line with this whole process. Recent guidance from the Treasury indicates that the certification of whether your company needs assistance is based on the current situation as of the date of the application. It's a good idea to get involved in that process early in anticipation of any problems that may arise. However, before submitting an application, businesses should consider their needs at the time they submit their application.

Do you know if businesses need to keep the loans in a separate account?

There is no requirement for businesses to keep loans in a separate account, but it is a good business practice to do so. Businesses will want to easily and accurately demonstrate what the loan money was used for come loan forgiveness time.

CARES FAQ

If the loans don't come out right away can you pay for things and then reimburse yourself?

You may use the loan money for such purpose, but do not expect such usage to be forgiven. The answer boils down to the different definitions of “covered period” under Sections 1102 and 1106. According to the Section 1102 definitions of “covered period” and “allowable uses of covered loans” you could use the loan proceeds to pay salaries or wages for the covered period of February 15 – June 30, 2020. But under Section 1106 (Loan Forgiveness), the term “covered period” means the 8-week period beginning on the date of the origination of a covered loan. Thus, the loan forgiveness is for an amount equal to the sum of the following costs incurred and payments made during the covered period:

1. Payroll costs.
2. Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).
3. Any payment on any covered rent obligation.
4. Any covered utility payment.

For forgiveness those covered costs incurred and payments made during the 8-week period after the loan origination would be forgiven, but allowable use of the loan proceeds could be for payroll or other costs falling between February 15, 2020 and June 30, 2020.

What if somebody has hired an employee but they haven't set up payroll by the time they apply for the loan? Does that not count?

It doesn't if they weren't employed by February 15th. The only exception would be if it's seasonal work. These employees can still be paid with PPP funds and will be counted in the employee count during the 8-week covered period.

What is going to be needed to prove that the calculations you made are correct and that the payments you made are correct. Do you have an idea of like what business should be prepared?

Essentially, businesses with a payroll provider will get the necessary reports from the payroll provider. These reports will be used for calculating the loan amount and to calculate the amount spent on payroll costs during the 8-week covered period.

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