



## CARES Act - Paycheck Protection Program

The CARES Act supplements and expands the Small Business Act (SBA) through the Paycheck Protection Program (PPP). The PPP guarantees loans to small businesses, a portion of which may be forgiven if used for certain payroll and operating costs during the current pandemic. The amounts otherwise subject to forgiveness can be reduced for businesses who either lay off or substantially reduce employees' pay.

### Eligibility:

Loans under the PPP are typically offered through local financial institutions and are available to “small business concerns” as defined under the Small Business Act.<sup>1</sup> The PPP also expands its loans to any business, nonprofit, veterans organization, or Tribal business concern if it employs no more than 500 employees, as well as to many sole proprietorships and independent contractors.<sup>2</sup>

The PPP does not require that a small business concern first be unable to obtain credit outside of the SBA loan program. It remains unclear how, or if, SBA lenders will apply the “credit elsewhere” test to businesses otherwise eligible for PPP loans that are not small business concerns.

### Definitions:

One particular term used throughout PPP that requires careful consideration in evaluating the needs of your business is “Payroll Costs.” Payroll costs means:

All compensation of employees (salaries and benefits), **excluding**:

- Compensation of an employee in excess of a \$100,000.00 annual salary, prorated for the period between February 15, 2020, and June 30, 2020
- Taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code between February 15, 2020, and June 30, 2020
- Compensation to employees residing outside of the United States
- Sick and family leave wages for which credit is allowed under the Families First Coronavirus Response Act

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<sup>1</sup> Information to determine if your business is a “small business concern” can be found at: <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>

<sup>2</sup> The Small Business Administration may allow for a greater number of employees and may calculate the number per physical location for certain industries. The PPP also includes certain business affiliations that may not otherwise qualify for SBA loans.

Borrowing Limits:

The amount available to any eligible business will be the lesser of:

- 2.5 x Average total monthly “payroll costs” for the 1-year period prior to the loan, + the outstanding balance of any disaster loan through the SBA that was made between January 31, 2020, through the date that the PPP loan is eligible to be refinanced<sup>3</sup>;

or

- \$10,000,000.00.

NOTE: However, the compensation of an individual employee in excess of an annual salary of \$100,000 will not count toward the payroll costs. For most small business this is most likely to occur with the salary of an organization’s Senior Principal or CFO

Example: Company “A” applies for a Paycheck Protection Loan on April 1, 2020. From April 2019 through March 2020 Company “A” had payroll costs of \$625,000. However, during that time period, the CEO compensation was \$125,000. For the purpose of calculating the loan, \$25,000, the amount of the CEO compensation in excess of \$100,000, will not be counted in the payroll costs. This means that Company “A” has an annual payroll cost of \$600,000. Company “A” should divide that amount by 12. The monthly payroll cost of Company “A” is \$50,000. Company “A” is eligible to apply for a Paycheck Protection Loan in the amount of \$125,000 (the monthly payroll cost multiplied by 2.5).

Permissible Uses (between February 15, 2020 and June 30, 2020):

- Those already allowed under SBA section 7(a) loans
- “Payroll Costs”
- Group Healthcare Benefits<sup>4</sup>
- Salaries and Commissions
- Interest Payments on Mortgage Obligations
- Rent
- Utilities
- Interest paid on any other debt incurred prior to February 15, 2020

Terms:

- No personal guarantee or collateral
- No recourse against shareholders, members, or partners unless they use funds for an unauthorized purpose
- No origination fee

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<sup>3</sup> Otherwise eligible seasonal businesses and those not in operation between February 15, 2019, and June 30, 2019, are subject to different calculations.

<sup>4</sup> Includes insurance premiums and continuation of benefits during periods of paid sick, medical or family leave.

- No annual fee between February 15, 2020, and June 30, 2020
- Interest rates no higher than 4.0% between February 15, 2020, and June 30, 2020
- 6 to 12 month complete payment deferment for most eligible businesses

#### Loan Forgiveness:

- Available for expenditures made during the 8-week period beginning the date of loan origination, for:
  - “Payroll costs”
  - Mortgage Interest: Interest payments on mortgages secured by real or personal property arising in the regular course of business before February 15, 2020.
  - Rent: For leases agreements in force before February 15, 2020.
  - Utilities: Electric, Water, Gas, Transport, Telephone and Internet if service began before February 15, 2020.
- Forgiven amount is excluded from gross income

#### Reductions in Forgiveness:

The PPP seeks to incentivize businesses to retain employees and maintain their wages during the COVID-19 pandemic. The PPP contemplates that employers of tipped workers may receive forgiveness of loan proceeds used to pay those workers higher wages during the covered period.

- Retaining Employees:
  - Amount eligible for forgiveness will be limited to the product of that amount times:
    - the average number of full time equivalent employees per month during the 8-week period following the loan,
    - Divided by, either, at the election of the business, the average number of full time equivalent employees per month
      - Between February 15, 2019, and June 30, 2019<sup>5</sup>; or
      - Between January 1, 2020, and February 29, 2020.
- Maintaining Salary and Wages:
  - Amount eligible for forgiveness will be reduced by any decrease in salary or wages in excess of 25% during the 8-week period following the loan compared to the preceding quarter for any employee who did

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<sup>5</sup> This period must be used for seasonal employers.

not receive salary or wages in any 2019 pay period that would equate to over \$100,000 on an annualized basis.

- Exemption for Re-Hires:
  - Employers who re-hire employees or return their wages to prior levels prior to June 30, 2020, will not be penalized for the reductions arising between February 15, 2020, and 30 days after enactment of CARE.

Loan Forgiveness Documentation:

- Businesses seeking to take advantage of the loan forgiveness provisions will have to make an application to their lender and should ensure that they have at least:
  - Verification of employees and pay rates by way of payroll tax filings, unemployment insurance filings, and other documentation; and
  - Evidence of mortgage interest, lease and utility payments.
- The appropriate business representative will also be required to certify that the above documentation is true and correct and that the amount sought to be forgiven was used for the outlined purposes.

**For loan/grant packing assistance  
contact our HRA Team at**

**956-583-0002**

**or**

**franksm.rutledge@gmail.com  
956-309-8307**

**HRA Loan Packaging Fee is**

**\$1,000 for small business with CPA**

**\$1,500 for small business with no CPA**

Prepared by the **U.S. CHAMBER OF COMMERCE**

# CORONAVIRUS EMERGENCY LOANS

## Small Business Guide and Checklist



The Coronavirus Aid, Relief, and Economic Security (CARES) Act allocated \$350 billion to help small businesses keep workers employed amid the pandemic and economic downturn. Known as the Paycheck Protection Program, the initiative provides 100% federally guaranteed loans to small businesses.

Importantly, these loans may be forgiven if borrowers maintain their payrolls during the crisis or restore their payrolls afterward.

The administration soon will release more details including the list of lenders offering loans under the program. In the meantime, the U.S. Chamber of Commerce has issued this guide to help small businesses and self-employed individuals prepare to file for a loan.

Here are the questions you may be asking—and what you need to know.

# 1 Am I ELIGIBLE?

You are eligible if you are:

- A small business with fewer than 500 employees
- A small business that otherwise meets the SBA's size standard
- A 501(c)(3) with fewer than 500 employees
- An individual who operates as a sole proprietor
- An individual who operates as an independent contractor
- An individual who is self-employed who regularly carries on any trade or business
- A Tribal business concern that meets the SBA size standard
- A 501(c)(19) Veterans Organization that meets the SBA size standard

In addition, some special rules may make you eligible:

- If you are in the accommodation and food services sector (NAICS 72), the 500-employee rule is applied on a per physical location basis
- If you are operating as a franchise or receive financial assistance from an approved Small Business Investment Company the normal affiliation rules do not apply

**REMEMBER:** The 500-employee threshold includes all employees: full-time, part-time, and any other status.

# 2 What will lenders be LOOKING FOR?

In evaluating eligibility, lenders are directed to consider whether the borrower was in operation before February 15, 2020 and had employees for whom they paid salaries and payroll taxes or paid independent contractors.

Lenders will also ask you for a good faith certification that:

1. The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations
2. The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments
3. Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here
4. 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)

If you are an independent contractor, sole proprietor, or self-employed individual, lenders will also be looking for certain documents (final requirements will be announced by the government) such as payroll tax filings, Forms 1099-MISC, and income and expenses from the sole proprietorship.



## What lenders will NOT LOOK FOR

- That the borrower sought and was unable to obtain credit elsewhere.
- A personal guarantee is not required for the loan.
- No collateral is required for the loan.

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# How much can I BORROW?

Loans can be up to 2.5 x the borrower's average monthly payroll costs, not to exceed **\$10 million**.



## How do I calculate my average monthly PAYROLL COSTS?



sum of  
**INCLUDED**  
payroll costs

-

sum of  
**EXCLUDED**  
payroll costs

=

**PAYROLL  
COSTS**

### **INCLUDED** Payroll Cost:

- 1. For Employers:** The sum of payments of any compensation with respect to employees that is a:
  - 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 the employee
- 2. For Sole Proprietors, Independent Contractors, and Self-Employed Individuals:** The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in one year, as pro-rated for the covered period.

### **EXCLUDED** Payroll Cost:

1. Compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the period February 15, to June 30, 2020
2. Payroll taxes, railroad retirement taxes, and income taxes
3. Any compensation of an employee whose principal place of residence is outside of the United States
4. Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–5 127); or qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act

#### NON SEASONAL EMPLOYERS:

**Maximum loan =**

2.5 X Average total monthly payroll costs incurred during the year prior to the loan date

***For businesses not operational in 2019:***

2.5 X Average total monthly payroll costs incurred for January and February 2020

#### SEASONAL EMPLOYERS:

**Maximum loan =**

2.5 X Average total monthly payments for payroll costs for the 12-week period beginning February 15, 2019 or March 1, 2019 (decided by the loan recipient) and ending June 30, 2019

# 4

## Will this loan be FORGIVEN?

Borrowers are eligible to have their loans forgiven.

### How Much?

A borrower is eligible for loan forgiveness equal to the amount the borrower spent on the following items during the 8-week period beginning on the date of the origination of the loan:

- Payroll costs (using the same definition of payroll costs used to determine loan eligibility)
- Interest on the mortgage obligation incurred in the ordinary course of business
- Rent on a leasing agreement
- Payments on utilities (electricity, gas, water, transportation, telephone, or internet)
- For borrowers with tipped employees, additional wages paid to those employees

The loan forgiveness cannot exceed the principal.

### How could the forgiveness be reduced?

The amount of loan forgiveness calculated above is reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees. Specifically:

#### Reduction based on reduction of number of employees



**PAYROLL COST**  
Calculated on page 2

**X**

Average Number of Full-Time Equivalent Employees (FTEs) Per Month for the 8-Weeks Beginning on Loan Origination

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#### 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 to June 30, 2019

#### Reduction based on reduction in salaries



**PAYROLL COST**  
Calculated on page 2

**—**

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.

### 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 30 days after enactment of the CARES Act, (as compared to February 15, 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.

## WHAT'S NEXT?

Look out for more information about eligible lenders and additional guidance from the SBA soon.

For more guidance and resources for small businesses, visit [uschamber.com/co](https://uschamber.com/co)