

SBA Paycheck Protection Loans

Notes from The Council Webinar:

Date: April 6, 2020

Concept: Allow small businesses to obtain a loan to continue operations during the COVID-19 crisis.

The loans are:

- Capped at 10M
- Loan repayment is due in 2 years but there is no penalty for prepayment, 1% interest rate (originally 0.5%)
- No payments required during first 6 months
- Are subject to 100% loan forgiveness if you meet the requirements

Who is eligible? Small businesses per SBA rules are eligible; however, these loans only consider employed count and not revenue counts. Generally, it is for up to 500 employees, or if the SBA small size standard is different based on the industry classification, the count can be over 500. Non-profits fall within the eligible class.

Churches, hotels and restaurants, franchises, and businesses that receive financial assistance from a licensed Small Business Investment Company will be counted based on their own FEIN.

Ineligible entities: These include (but not limited to): household employees, those who generate most of their revenue from gambling, marijuana grow houses, most financial businesses primarily engaged in lending, private clubs that limit the number of memberships, most passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired, life insurance companies, pyramid sale distribution plans, political or lobbying businesses, and speculative businesses. 501c-6 entities are also not eligible, but this may be rectified in phase 4.

How do you count employees? Count all FT and PT employees of the company and any affiliates. Also count independent contractors. There is an open question whether the 500 is based on your count the date you apply for the loan, or the prior year average. Steptoe expects SBA to provide guidance, but their read is that is on the date you apply for the loan.

How do you determine an affiliate? Entities are affiliates if they have 50% common ownership OR a common management under the same Board, OR interest with close relatives OR common stock options/agreements to merge.

What is needed for the application? Application will list basic business information, all owners with a 50% stake, other entities of common ownership, details on any other emergency disaster loans taken YTD in 2020, and criminal history of any owners. Loan application can be signed by one business owner representative with certification. All common owners do not need to sign. You must include payroll documentation with your loan application. Loan paperwork requests 2019 documentation, but rules allow for rolling 12 months.

Link to app: <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>

How is loan amount verified? Banks are permitted to rely on payroll documentation provided by the borrower. The borrower is 100% responsible for the accuracy of the amount requested, not the lender. The borrower will certify that they were in operation on 2/15/20; need the loan to support/maintain existing operation; will use the loan to retain workers and maintain existing obligations for payroll, lease, mortgages, utilities; promise that they haven't received and will not receive other loans this year (this is important if another round of stimulus/loans is made available); and promise to provide a list of all employees with payroll and other expense documentation in 8 weeks to be evaluated for forgiveness.

What is the maximum loan amount? The maximum loan amount is 250% of the monthly payroll cost to a max of 10M during the last 12 months. (The app says average cost in 2019). There are alternative lookbacks for calculating costs for seasonal workforces. The 250% calculation for payroll includes the cost of payroll and insurance. Other items that are eligible for the loan include: mortgage interest, interest on other obligations, rent/mortgages, existing SBA loans.

Can you include amounts paid to 1099 employees in your loan request? No, the thought is 1099 contractors would request their own loan. However, you do need to include 1099 workers as part of your count to see if you are over/under the 500 threshold.

Can you include employee contributions toward health premiums in your loan amount? The employee's share of cost is already included in the wages that were paid, so you would only need to add the employer's share of cost to your payroll figures.

LOAN FORGIVENESS PROVISIONS:

There will be a separate application for the loan forgiveness. Eight weeks after your loan origination, you must submit documentation of the number of FT employees on payroll as well as other financial obligations paid in the last 8 weeks (rent, mortgage interest, utilities). Any amounts spent more than 8 weeks after the loan origination is not eligible for forgiveness.

KEY TAKEAWAYS: To have your loan forgiven, you must spend 75% of the loan on payroll costs. This includes payroll and employer paid insurance. Also, the law allows until April 26th for loan forgiveness provisions to be finalized, so things can/will change.

What could impact the forgiveness amounts? Layoffs/pay reductions that are not ‘made-up’ before 6/30/2020. Note that you can reduce payroll for employees earning over \$100K without impacting your forgiveness provisions. Currently there are no forward-looking obligations beyond the 8 weeks. This means that you could technically lay off/reduce wages after 6/30 without impacting your loan forgiveness allowances.

How do Payroll Protection Loans interact with other CARES Act relief programs? You are not eligible for a PPL if you received an employee retention credit or an employment tax deferral relief under the CARES Act. Businesses must compare the immediate need for a cash loan versus the long-term liquidity benefits available through the other programs.

How do Payroll Protection Loans interact with FFCRA programs? At this time, it appears you may submit for tax credits provided for through EFMLEA and EPSLA. However, you should not submit for same dollar relief under multiple programs.

OTHER FINANCIAL RELIEF PROGRAMS FOR EMPLOYERS:

EMPLOYEE RETENTION CREDIT (CARES Act) provides eligible employers a refundable credit against payroll tax (Social Security and Railroad Retirement) liability equal to 50% of the first \$10,000 in wages per employee (including value of health plan benefits). This is not available for employers who take a PPL.

EMPLOYMENT TAX DEFERRAL RELIEF (CARES Act) postpones the due date for depositing employer payroll taxes and certain self-employment taxes attributable to wages paid during 2020. The deferred taxes would be payable over the next two years: half due December 31, 2021, and half due December 31, 2022. This is not available for employers who take a PPL.

ECONOMIC INJURY DISASTER LOAN (EIDL) – This is funded through an earlier provision of the Small Business Act. Funds obtained through EIDL loans cannot be used for the same purpose as loan funds obtained through the CARES Act.

EIDL Grants - For businesses that are currently experiencing temporary difficulties, this provides up to \$10,000. Funds are made available within 3 days of successful application, will not have to be repaid, and businesses are eligible if they employ fewer than 500 employees. This fund reduces the forgivable amount of PPL.

FL SMALL BUSINESS EMERGENCY BRIDGE LOAN – This provides working capital, is interest free, offers up to \$25,000, 1-year term and involves 2-100 employees. Apply at the Florida Department of Economic Opportunity <http://www.floridajobs.org/rebuildflorida/>

SBA DEBT RELIEF LOAN - SBA will pay the principal, interest, and fees of current 7(a) loans for a period of 6 months and new loans issued prior to 9-27-20.

MAIN STREET BUSINESS LENDING PROGRAM for small/mid-size businesses. No details are currently available.

DIRECT LOAN PROGRAM FOR AIR CARRIERS, CARGO AIR CARRIES, AND BUSINESSES CRITICAL TO MAINTAINING NATIONAL SECURITY: Information upcoming.