

April 15, 2020

**Paycheck Protection Program – Summary**  
*For Information Only, Not Legal Advice<sup>1</sup>*

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), signed into law on Friday March 27, 2020, established the Paycheck Protection Program (the “PPP”) with \$349 billion in funding.

The PPP provisions were interpreted by the U.S. Small Business Administration (“SBA”) in two interim final rules:

- The first issued on April 2, 2020 (the “[Interim Rule](#)”); and
- The second ruled issued on April 3, 2020 (the “[Affiliation Rule](#)”), and, in conjunction with the Affiliation Rule, the SBA also issued a two-page explanation of the affiliation principles applicable to the PPP (the “[Affiliation Guidance](#)”).

PPP loans are 100% federally guaranteed loans for small businesses intended for companies to maintain their payroll levels and allow partial loan forgiveness, as described below. Unlike most typical SBA loans, the PPP Loans are unsecured loans requiring no collateral, no personal guarantee, and no showing that credit is unavailable elsewhere.

The Interim Rule clarifies that the PPP loans, to the extent not forgiven, will have:

- A 2-year term (decreased from the maximum maturity of 10 years under the Act);
- An interest rate of 1% (increased from 0.5% in prior Treasury guidance; and
- Principal and interest deferred for 6 months and no interest charged on forgiven amounts.

Small businesses and sole proprietorships can begin applying April 3, 2020, and **independent contractors and self-employed individuals can begin applying April 10, 2020**. The Interim Rule also makes it clear that the loans will be made on a **first-come, first-served basis**. Given the currently available funds for the program, Treasury and SBA are anticipating an over-subscription, so it is critical to gather required information and, if eligible, submit an application as soon as possible.

The SBA borrower application is available ([here](#)). Lenders may require borrowers to complete additional paperwork. Loans are offered through any existing SBA 7(a) lender or through any eligible and participating federally insured depository institution, federally insured credit union, Farm Credit System institution and certain other depository or non-depository financing providers.

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<sup>1</sup> This paper is the work product of Attorney Kai Hovden, DeWitt LLP intended as a brief summary developing implementation of the Payroll Protection Plan. This summary is oriented to transportation providers, is not legal advice and is intended as information only.

**Eligibility Requirements:**

In general and subject to certain SBA exclusions, to be eligible for a PPP loan, a company must be either

- A small business concern under the SBA regulations, or
- A business concern, nonprofit organization, veterans' organization, or Tribal business concern that employs not more than 500 employees whose principal place of residence is in the United States (or the number of employees in the size standard applicable to the borrower's industry, which for some industries is up to 1500 employees).

Eligible companies must have been in operation on February 15, 2020 and must have, as of that date, had employees for whom the entity paid salaries and payroll taxes, **or paid independent contractors**. Additional guidance is needed to understand whether companies that use professional employer organizations satisfy this requirement.

Additionally, a borrower must certify that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient and acknowledge that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments. The borrower also must certify that it is eligible for a PPP loan under the CARES Act and guidance in place as of the application date. **These certification requirements are important to note, as false or misleading certifications could potentially give rise to civil False Claims Act liability or criminal penalties.**

**Amount of the Loan:**

The maximum amount of a PPP loan available to each borrower is equal to the lesser of:

- (a) \$10 million, or
- (b) 2.5 x its average total monthly payroll costs (as defined below).

The CARES Act and Interim Rule provide that average monthly payroll costs should be calculated over the 12-month period preceding the application, but the application form itself states that monthly payroll costs will be calculated using 2019 payroll costs for most applicants.

For purposes of the PPP, "payroll costs" for an independent contractor include the sum of payments of any compensation or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment or similar compensation (not in excess of more than \$100,000 in 1 year, prorated).

Note, however, that this definition of "payroll costs" assumes that each independent contractor is applying for his/her own SBA Loan - not that the business entity will be completing a loan

application on behalf of ICs. The Interim Rule clarifies that independent contractors of a borrower do not count for purposes of the borrower's PPP loan amount or forgiveness calculations. This was not clear from the face of the CARES Act and should be considered by borrowers pursuing a PPP loan. Since independent contractors can also apply for a PPP loan, this appears to be a change to eliminate potential double counting.

**Use of Loan Funds:**

The loans may be used for the following expenses/costs from February 15, 2020 through June 30, 2020:

- Payroll costs (as defined above)
- Costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums
- Employee compensation
- Mortgage interest obligations (but not principal)
- Rent and utilities
- Interest on debt incurred prior to the loan
- Refinancing of SBA EIDLs that are made between January 31, 2020 and April 3, 2020

Note, however, that (i) the Interim Rule clarifies that at least 75% of the loan amount must be used for payroll costs and (ii) only a subset of these uses may be forgiven, as explained in more detail below. This is different from prior Treasury guidance, which did not require that 75% of the loan be *used* for payroll costs if the borrower was not seeking forgiveness. Certifications, including those carrying the penalties described above, must be made about the uses of the loan proceeds.

**Loan Forgiveness:**

A PPP loan-borrower is eligible for loan forgiveness up to the full amount of the loan and any accrued interest for costs incurred and payments made during the 8-week period after the origination date, subject to proper documentation, on:

- Payroll costs (as defined above),
- Mortgage interest on mortgages that had been in place prior to February 15, 2020,
- Rent with respect to leasing agreements that had been in place before February 15, 2020, and
- Payment of service for the distribution of electricity, gas, water, transportation, telephone, or internet access for such services that began before February 15, 2020.

Note, however, that:

- At least 75% of the forgiven amount must be used for payroll costs and
- The amount of the PPP loan forgiveness may be reduced if the borrower reduces the number of employees or salaries and wages (for employees with annual salaries of \$100,000 or less by more than 25%).

The reduction penalty will not apply to the extent the borrower restores their workforce count and salaries/wages by June 30, 2020.

**What is Needed to Apply; Where to Apply:**

Independent contractors must gather the necessary paperwork as soon as possible. An important component is an applicant's completed **2019 tax return**. The loan requires returns for processing and calculating the loan amount. Necessary documents include:

- 2019 Tax Returns
- Federal Tax Identification Number
- Payroll Tax Filings
- 1099s-MISC Records
- Income & Expenses; Bank Records

In the eyes of the IRS, you will be treated as a sole proprietor. You will need your Schedule C on line 31 based on your 1099s from your 2019 tax return. This number is your net profit and can be used to determine salary. You may also add up your 1099s together from the past year and divide it by 12 to receive a rough monthly estimate.

Many banks and lenders pre-approved with the SBA to help meet the need and respond to the rush of applications. There is a resource to identify and locate [the SBA Preferred Lending Partners](#).

**What About the "Economic Injury Disaster 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.

# Key Differences: PPP & EIDL

	PAYCHECK PROTECTION PROGRAM (PPP)	ECONOMIC INJURY DISASTER LOANS (EIDL)
<b>Loan Amount</b>	<ul style="list-style-type: none"> <li>Up to 2.5 months of payroll cost with a maximum of \$10 million</li> </ul>	<ul style="list-style-type: none"> <li>Up to \$2 million, based on actual economic injury determined by SBA</li> </ul>
<b>Eligible Borrowers</b>	<ul style="list-style-type: none"> <li>All small businesses in operation as of 2/15/20 with fewer than 500 employees</li> <li>NAICS 72 sector businesses with more than 500 employees</li> <li>501(c)(19) veteran groups, 501(c)(3)s, and tribal businesses with fewer than 500 employees</li> <li>Self-employed individuals</li> <li>Independent contractors</li> <li>Sole proprietorships</li> </ul>	<ul style="list-style-type: none"> <li>All SBA qualified small businesses and cooperatives 500 or fewer employees</li> <li>Private nonprofit organizations</li> <li>ESOPs fewer than 500 employees</li> <li>Independent contractors</li> <li>Sole proprietorships</li> <li>Tribal businesses</li> </ul>
<b>Application Process</b>	<ul style="list-style-type: none"> <li>Issued directly by SBA-approved banks</li> <li>100% guaranteed by SBA</li> <li>Loan fees waived</li> </ul>	<ul style="list-style-type: none"> <li>Issued by the SBA, approval solely on credit score and financial need</li> <li>Loan fees, requirement to show need, and one-year of operations waived</li> </ul>
<b>Collateral</b>	<ul style="list-style-type: none"> <li>No collateral</li> </ul>	<ul style="list-style-type: none"> <li>Collateral required for loans more than \$25,000</li> </ul>
<b>Personal Guaranty</b>	<ul style="list-style-type: none"> <li>No personal guaranty</li> </ul>	<ul style="list-style-type: none"> <li>Required for loans more than \$200,000</li> </ul>
<b>Interest</b>	<ul style="list-style-type: none"> <li>4% cap</li> </ul>	<ul style="list-style-type: none"> <li>3.75% for businesses; 2.75% for nonprofits</li> </ul>
<b>Forgiveness/Grants</b>	<ul style="list-style-type: none"> <li>SBA will provide eight weeks of loan forgiveness for funds applied to payroll cost, mortgage interest, rent, and utility expenses between 2/15/20 – 6/30/20</li> </ul>	<ul style="list-style-type: none"> <li>SBA may provide up to \$10,000 in emergency grants to EIDL applicants that need it</li> <li>Applicants do not need to repay the grants even if the loan application is denied</li> </ul>
<b>Deferred Payments</b>	<ul style="list-style-type: none"> <li>Automatic deferral of principal/interest payments for six months to one year</li> </ul>	<ul style="list-style-type: none"> <li>Automatic deferral of principal/interest for all of 2020; up to one year</li> </ul>
<b>Uses</b>	<ul style="list-style-type: none"> <li>Working capital, refinance existing debt, etc., but forgiveness only provided if used for costs described above</li> </ul>	<ul style="list-style-type: none"> <li>Working capital, inventory, equipment purchases, real estate payments, and other operating expenses</li> </ul>
<b>Availability</b>	<ul style="list-style-type: none"> <li>Available only until 6/30/20</li> </ul>	<ul style="list-style-type: none"> <li>Grants only available until 12/31/20</li> </ul>

**Resources:**

- <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
- <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>
- <https://www.schatz.senate.gov/coronavirus/small-businesses/sba-paycheck-protection-loan-program>
- <https://www.natlawreview.com/article/sba-loans-under-cares-act-updated-0>
- Chart Source: <https://www.startupjunkie.org/ppp-loan-guide>