

Paycheck Protection Program Applying for a First-Draw PPP Loan

Current as of
January 26, 2021

What is the Paycheck Protection Program (“PPP”)?

The PPP is a program established under the Coronavirus Aid, Relief, and Economic Security Act (“*CARES Act*”) to provide federal loans to small businesses, sole proprietors, self-employed individuals, independent contractors and certain nonprofits that were in operation on or before February 15, 2020 to help cover payroll and certain other expenses during a “covered period” (defined on page 3). Borrowers may be eligible for forgiveness of their PPP loan if certain conditions are met (discussed on pages 3-4); otherwise the loan must be repaid over five years (or two years if issued before June 5, 2020) with interest at 1%.

When the program was launched, eligible businesses could only apply for a single PPP loan, and the program ended in August 2020. On December 27, 2020, however, Congress passed new legislation allocating additional funds to reopen the PPP. The new law makes loans available to first-time PPP borrowers (“*first-draw PPP loans*”) and second PPP loans to certain returning PPP borrowers (“*second-draw PPP loans*”).

Eligible small businesses may apply for and receive a PPP loan from a participating lending institution **through March 31, 2021** (or until funding is exhausted).

Am I eligible for a first-draw PPP loan?

— **Borrower-type:** Borrower must be:

- an independent contractor, sole proprietor or self-employed individual that files an IRS Form 1040 Schedule C,
- a small business, 501(c)(3) nonprofit organization, 501(c)(19) veterans organization or Tribal business concern that (together with its affiliates) has no more than 500 employees or otherwise meets the SBA employee-based size standards for the applicable industry (businesses classified under NAICS codes beginning with 72 – covering hotels, restaurants and other accommodation and food services – are eligible if they have fewer than 500 employees per physical location),
- a small business that (together with its affiliates) meets the SBA revenue-based size standards either for the applicable industry or under the “alternative size standard” (*i.e.*, tangible net worth of no more than \$15m and average net income of not more than \$5m for two years preceding application),
- a section 501(c)(6) organization (such as a chamber of commerce) or a “destination marketing organization” that (together with its affiliates) has no more than 300 employees and that does not engage in significant lobbying activity,
- a housing cooperative that (together with its affiliates) has no more than 300 employees, or
- a news organization that is majority owned or controlled by a newspaper publishing or radio broadcasting company or a nonprofit public broadcasting entity with a newspaper publishing or radio broadcasting business that (i) together with its affiliates, employs no more than 500 employees per location (or otherwise satisfies the applicable industry size standards established by the SBA) and (ii) certifies that the PPP proceeds will be used to support expenses at the component of the organization that produces or distributes locally focused or emergency information.

— **Active:** Business must have (i) been in operation on or before February 15, 2020 and (ii) *either* had employees (for whom the borrower paid salaries and payroll taxes) or independent contractors, *or* have been an eligible self-employed individual, independent contractor or sole proprietorship with no employees.

— **Need:** Current economic uncertainty must make the PPP loan necessary to support the ongoing operations of the business.

— **Exceptions:** Otherwise eligible businesses will not receive a PPP loan if (i) 20% or more of the business owners are currently incarcerated or subject to criminal charges for a felony or have been convicted of (or pled to) a felony involving fraud within the last five years (or any other felony within the last year), (ii) the business (or another business owned by the same person) has defaulted on a prior SBA loan within the last seven years, (iii) the business receives a “shuttered venue grant,” (iv) the business is a publicly traded company, (v) the business is owned or controlled by certain high-level government officials (*e.g.*, the President or Vice President or a Member of Congress), or (vi) the business is in bankruptcy.

How much can I borrow with a first-draw PPP loan?

Maximum loan amount for first-draw PPP loans is the lesser of:

- \$10 million *or*
- 2.5 times the borrower’s monthly payroll expenses (including any owner compensation), capped for each employee at \$100,000 on an annualized basis and measured across 2019, 2020 or (for borrowers that are not independent contractors, sole proprietors or self-employed individuals) the 1-year period before the date on which the loan is made (the “*payroll reference period*”).

Can I increase the amount of my first-draw PPP loan?

There are a few circumstances in which a borrower may increase the amount of its first-draw PPP loan:

- If a partnership received a PPP loan that only included amounts necessary for payroll costs of the partnership’s employees and other eligible operating expenses, but did not include any amount for partner compensation, the borrower may apply to increase its PPP loan amount to include appropriate partner compensation.
- If a borrower returned all of a PPP loan, the borrower may reapply for a PPP loan in an amount the borrower is eligible for under current PPP rules.
- If a borrower either returned part of a PPP loan or did not accept the full amount of the PPP loan for which it was approved, the borrower may reapply for an amount equal to the difference between the amount retained/accepted and the amount previously approved.

Paycheck Protection Program Applying for a Second Draw PPP Loan

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Am I eligible for a second-draw PPP loan?

The eligibility requirements for second-draw PPP loans are narrower than those for first-draw PPP loans.

- To be eligible the borrower must have:
 - received a first-draw PPP loan and used the entire first-draw PPP loan (including the amount of any increase on the first-draw PPP loan) on eligible expenses (as described on page 3) on or before the date the second-draw PPP loan is disbursed (*i.e.*, the covered periods for first- and second-draw PPP loans cannot overlap),
 - no more than 300 employees (or, for certain hotels and restaurants and otherwise eligible news organizations, 300 employees per location), and
 - experienced a revenue reduction of at least 25% in 2020 as compared to 2019, calculated by comparing the borrower's quarterly gross receipts (*i.e.*, all revenue from sales, rents, royalties, interest, dividends or other sources, but not including the forgiven amount of a first-draw PPP loan or any Economic Injury Disaster Loan ("EIDL") advance) for one quarter in 2020 with the borrower's gross receipts for the corresponding quarter of 2019 (with special rules for borrowers who were not in operation for all of 2019). A borrower that was in operation during all four quarters of 2019 is deemed to have experienced the required revenue reduction if it experienced a reduction in annual receipts of at least 25% in 2020 compared to 2019 and the borrower submits copies of its annual tax forms substantiating the revenue decline to the lender.
- Businesses will not be eligible for a second-draw PPP loan if they:
 - are primarily engaged in political or lobbying activities (including think tanks),
 - are organized in or have certain ties to China,
 - received a "shuttered venue grant," or
 - would otherwise be ineligible for a first-draw PPP loan under the guidance described on page 1 (*e.g.*, borrower is publicly traded or owned by certain government officials).

How much can I borrow with a second-draw PPP loan?

Maximum loan amount for second-draw PPP loans is the lesser of:

- (i) \$2 million *or*
- (ii) 2.5 times the borrower's monthly payroll expenses (including any owner compensation) (or 3.5 times, for certain hotels and restaurants), capped at \$100,000 per employee on an annualized basis and measured across the payroll reference period.

How do I apply for a first- or second-draw PPP loan?

- Submit a PPP loan application and documentation to substantiate the borrower's payroll costs (and, in the case of a second-draw loan for more than \$150,000, documentation to substantiate the 25% revenue reduction) to a participating bank or platform (such as PayPal, Square and Intuit) before March 31, 2021 (or earlier, as the PPP funds may be exhausted before the application deadline).
- To find an eligible lender, the SBA has set up a search tool (<https://www.sba.gov/funding-programs/loans/lender-match>). Each lender may use its own application form, but the SBA's form applications are available at the following links:
 - **First-draw PPP loans:** <https://home.treasury.gov/system/files/136/PPP-Borrower-Application-Form.pdf>
 - **Second-draw PPP loans:** <https://home.treasury.gov/system/files/136/PPP-Second-Draw-Borrower-Application-Form.pdf>

How do I calculate my loan amount?

PPP borrowers can generally calculate their maximum loan amount (for first- or second-draw PPP loans) as follows:

- ✓ **Step 1:** Add up payroll costs (*i.e.*, wages, tips, paid leave for vacations and sick leave, payments for the provision of employee benefits (*e.g.*, health, life, disability, vision, and dental), state and local taxes assessed on compensation – but not payments to independent contractors) – and/or, if the borrower is a self-employed individual, independent contractor or sole proprietor, net profits from their IRS Form 1040, Schedule C line 31 – from the payroll reference period for employees whose principal place of residence is the United States.
- ✓ **Step 2:** Subtract any compensation paid to an employee in excess of an annual salary of \$100,000, or, if the borrower is a self-employed individual, independent contractor or sole proprietor, subtract net profits in excess of \$100,000 per year.
- ✓ **Step 3:** Calculate average monthly payroll costs (divide the amount from Step 2 by 12).
- ✓ **Step 4:** Multiply the average monthly payroll costs from Step 3 by 2.5 (or 3.5, if applicable).
- ✓ **Step 5:** For first-draw PPP loans, add the outstanding amount of any EIDL taken from January 31, 2020 through April 3, 2020 that the borrower seeks to refinance (not including the amount of any EIDL advance).

Paycheck Protection Program Spending PPP Loan Proceeds

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What will the terms of my PPP loan be?

Terms are generally the same for first- and second-draw PPP loans.

- **Interest Rate:** 1% on any loan amount not forgiven; all customary SBA loan fees are waived.
- **Maturity date:** Five years for PPP loans received on or after June 5, 2020 and two years for PPP loans received before June 5, 2020 (unless borrower and lender agree to a longer term).
- **Deferral:** Payments of interest and principal are deferred until earlier of (i) 24 weeks + 10 months following PPP loan disbursement and (ii) the SBA's determination that all or part of the PPP loan is not forgivable.
- **Use of Proceeds:** Payroll costs for US resident employees (such as employee salaries and benefits) and certain nonpayroll costs, described below.
- **Other Terms:** Loans are uncollateralized, do not require a personal guarantee and are nonrecourse to borrower's shareholders/ members/partners.

How much of my loan may be forgiven?

The amount eligible for PPP loan forgiveness is based on three main factors:

- (1) spending on eligible payroll and non-payroll expenses during the borrower's covered period,
- (2) reductions based on decreases in salary or hourly wages and the borrower's full-time equivalent ("FTE") employees (FTE essentially measures the borrower's total full-time employees, calculated by aggregating its part-time employees), and
- (3) at least 60% of the loan amount being spent on eligible payroll costs.

When and how must PPP loan proceeds be spent in order to be eligible for forgiveness?

When: The borrower must spend its PPP loan proceeds during its covered period – that is, the period beginning on the date its PPP loan is disbursed and ending on any date selected by the borrower that occurs between 8 and 24 weeks after the date of disbursement.

How: To be eligible for full forgiveness, at least 60% of the PPP loan must be spent on eligible payroll costs, and no more than 40% of the PPP loan may be spent on eligible nonpayroll costs.

Eligible **Payroll Costs** Paid or Incurred During the Covered Period

(at least 60% of total forgiven amount)

- (1) **Salary, wages, bonuses, hazard pay, and commissions to furloughed employees resident in the United States**, not including any payroll costs that are qualified wages taken into account in determining the Employer Retention Credit (for each employee, wages may be up to \$100,000 annualized or, for owner-employees and self-employed individuals, their 2019 or 2020 compensation (depending on year used to calculate the loan amount) prorated for the length of the covered period (capped at 2.5 months' worth)),
- (2) Employer contributions to **employee retirement plans** and **group health, life, disability, vision or dental coverage** (but not contributions to retirement or health insurance by sole proprietors or self-employed individuals), and
- (3) Payments of employer portion of **state and local taxes** assessed on compensation.
- Expected to be eligible if incurred during covered period and paid on or before next regular payroll date (even if payment date is after covered period).
- Costs are considered **incurred** on the day an employee's pay is earned and **paid** on the day a paycheck is distributed or borrower originates an ACH credit transaction.

Eligible **Non-Payroll Costs** Paid or Incurred During the Covered Period

(at most 40% of total forgiven amount)

- **Mortgage interest payments:** Business mortgage on real or personal property; mortgage must have been incurred before February 15, 2020; cannot include prepayments of interest or payments of principal.
- **Rent or lease payments:** Real or personal property; contract in force before February 15, 2020.
- **Utility payments:** Electricity, gas, water, transportation, telephone or internet access for which service began before February 15, 2020.
- **Covered operations expenditures:** payments for software/cloud computing services that facilitate business operations, product/service delivery, payroll and HR functions, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses.
- **Covered property damage costs:** certain costs due to property damage or vandalism resulting from public disturbances during 2020 and not covered by insurance.
- **Covered supplier costs:** payments to suppliers that are essential to the business (so long as the applicable contract/purchase order was in effect before receipt of the PPP loan or, with respect to perishable goods, during the covered period); and
- **Covered COVID-19 related expenditures:** costs of capital expenditures and worker protections to comply with COVID-19 health and safety guidelines issued after March 1, 2020, including personal protective equipment and facility modifications such as drive-through windows, sneeze guards, air filtration systems, expansion of outdoor spaces and health screening capacities (but not for residential real property or intangible property).

Important points on PPP loan forgiveness

- **EIDL advances:** If a PPP borrower received an EIDL advance, the advance amount will no longer be deducted from the PPP loan forgiveness amount. This rule also applies to prior PPP loans. The SBA will remit a reconciliation payment to PPP lenders for EIDL advances previously deducted, and PPP lenders will be responsible for notifying borrowers of and making adjustments for these reconciliation payments.
- **Impact of loan forgiveness on taxable income and deductions:** The forgiven amount of any PPP loan will be excluded from the calculation of gross income for U.S. federal income tax purposes (state and local law may differ). Businesses will be allowed to take tax deductions for otherwise deductible business expenses (including wages) even if paid with proceeds of forgiven PPP loans.

FTE-based forgiveness reduction rules (for PPP loans greater than \$50,000)

- **Forgiveness reduction:** If a borrower's PPP loan is greater than \$50,000 and its average number of FTE employees during the covered period is less than its average number of FTE employees during its chosen "reference period," the total eligible expenses available for forgiveness will be reduced proportionately by the percentage reduction in FTE employees, *unless* the borrower can satisfy any of the exceptions described below. The borrower's "reference period" may be either the period from February 15, 2019 to June 30, 2019 or the period from January 1, 2020 to February 29, 2020 (or, for a "seasonal employer" (as defined by the SBA), any consecutive twelve-week period between February 15, 2019 and February 15, 2020).
- **Two options to measure FTE employees**
 - **Option A:** For each employee, divide the number of hours paid per week by 40, and round the total to the nearest tenth. The maximum for each employee is capped at 1.0, even if the employee works more than 40 hours per week.
 - **Option B:** Count each employee who works 40 hours or more per week as 1.0 FTE and each employee who works less than 40 hours per week as 0.5 FTE.
- **Exceptions:**

A borrower will be exempt from the FTE-based reduction if:

 - It (1) reduced its FTE employees between February 15, 2020 and April 26, 2020; and (2) then restored its FTE employees by December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, by the last day of the covered period).
 - It can document in good faith that it was unable to return to same level of business due (directly or indirectly) to compliance with COVID-19-related restrictions issued by the Department of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration between March 1 and December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, not later than the last day of the loan's covered period). Such documentation must include copies of the applicable guidance (which may include local or state orders referencing federal guidance) for the business location and relevant borrower financial records.
 - It can document in good faith: (i) an inability to rehire individuals who were employees of the borrower on February 15, 2020; and (ii) an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, not later than the last day of the loan's covered period). Borrowers are required to inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection of the offer, and the borrower should maintain documents sufficient to show compliance with this exemption (including the written offer to rehire an individual, a written record of the offer's rejection, and a written record of efforts to hire a similarly qualified individual).

When an employee of the borrower (i) is fired for cause, (ii) voluntarily resigns, (iii) voluntarily requests a reduced schedule, or (iv) refuses the borrower's offer of a restored schedule at the same wages during the covered period, the borrower may ignore any resulting FTE reductions for purposes of calculating its FTE-based forgiveness reduction.

Wage-based forgiveness reduction rules (for PPP loans greater than \$50,000)

- **Forgiveness reduction:** For each new employee in 2020 and 2021, as well as each existing employee who was not paid more than the annualized equivalent of \$100,000 in any pay period in 2019, the borrower must reduce the total forgiveness amount from any PPP loan greater than \$50,000 by the total dollar amount of the salary or wage reductions that are in excess of 25% of the salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.
- **Exception:** A borrower will be exempt from the wage-based reduction if it (1) reduced employee salaries or wages between February 15, 2020 and April 26, 2020; and (2) then eliminated the reductions by December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, by the last day of the covered period).

Paycheck Protection Program Applying for Loan Forgiveness

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How do I apply for PPP loan forgiveness?

Borrowers should submit the applicable PPP loan forgiveness application (or an equivalent form from their lender) and required documentation to their lender.

Three options available:

- **Simplified Forgiveness Application Form:** If the borrower's first- or second-draw PPP loan was for **\$150,000 or less**, they can use the SBA's simplified forgiveness application form (SBA Form 3508S), or their lender's equivalent: <https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-Instructions--Form-3508S-1192021.pdf>
 - The simplified form requires borrowers to provide (i) information about their PPP loan, (ii) the amount of their loan spent on payroll costs and (iii) their requested forgiveness amount (at least 60% of which must be reflected in the amount of proceeds reportedly spent on payroll).
 - For a second-draw PPP loan, the borrower must submit documentation to substantiate its 25% reduction in gross proceeds in 2020 (unless the borrower submitted such documentation when it applied for its PPP loan). The borrower must also retain (but need not submit) all payroll/employment records necessary to prove compliance with PPP rules for four years and all other supporting documentation for three years after they apply for forgiveness.
 - If a borrower received a loan of more than \$50,000, the borrower will not be subject to any reduction in forgiveness if it can attest (i) that it did not reduce annual salaries or hourly wages of any employee by more than 25% during the covered period compared to the most recent full quarter before the covered period, and (ii) that *either* (a) the borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the covered period *or* (b) the borrower was unable to operate during the covered period at the same level of business activity as before February 15, 2020, due to federal COVID-related guidance issued between March 1, 2020 and December 31, 2020 (or, for a PPP loan made after December 27, 2020, issued before the last day of the covered period). If the borrower cannot so attest, it must use (but need not submit) the standard PPP forgiveness application (SBA Form 3508) to calculate its requested loan forgiveness amount.
- **EZ Forgiveness Application Form:** The borrower can use this form (SBA Form 3508EZ), or their lender's equivalent, if the borrower's PPP loan was for **more than \$150,000** and the borrower can certify that (i) it **did not reduce salaries or hourly wages** of any employee by more than 25% for any employee during the covered period compared to the most recent quarter before the covered period, and (ii) *either* (a) it **did not reduce the number of employees or the average paid hours** of employees between January 1, 2020 and the end of the covered period (other than any reductions that arose from an inability to rehire individuals who were employees on February 15, 2020, if the borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020 (or, for a PPP loan made after December 27, 2020, before the last day of the covered period), and reductions in an employee's hours that a borrower offered to restore and were refused), *or* (b) it was **unable to operate between February 15, 2020, and the end of the covered period at the same level of business activity** as before February 15, 2020 due to compliance with federal COVID-related guidance issued between March 1, 2020 and December 31, 2020 (or, for a PPP loan made after December 27, 2020, issued before the last day of the covered period): <https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-Instructions--Form3508EZ-1192021.pdf>
 - Borrowers using the EZ form must also submit documentation verifying their payroll and nonpayroll costs in compliance with the PPP rules, and certain other documentation verifying the borrower's eligibility to use the EZ form must be maintained for six years after the date the loan is forgiven or repaid in full.
- **Standard Forgiveness Application Form:** **All other borrowers** must apply for PPP loan forgiveness using the standard application form (SBA Form 3508), or their lender's equivalent: <https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-and-Instructions--Form-3508-1192021.pdf>.
 - Borrowers must also submit Schedule A to the form, which sets out the applicable wage and FTE-based reduction amounts to the forgiveness calculation. These borrowers must also submit documentation verifying their payroll and nonpayroll costs and FTE employee levels in compliance with the PPP rules. Certain other documentation (including the Schedule A Worksheet to the form) verifying the applicable reductions to forgiveness must be maintained for six years after the date the loan is forgiven or repaid in full.

Timing considerations

- **Applications:** Borrowers may apply for forgiveness anytime on or before the date of maturity of the loan if they have used all of the loan proceeds for which they are requesting forgiveness, but they will have to start making payments of principal and interest if they do not apply for forgiveness within 10 months of the end of the maximum covered period of 24 weeks. For second-draw PPP loans more than \$150,000, borrowers must apply for forgiveness of their first-draw PPP loan before or at the same they apply for forgiveness of their second-draw PPP loan.
- **Determinations:** Lenders have 60 days to submit a decision on forgiveness to the SBA, which then has 90 days to remit to the lender the funds for the amount forgiven, subject to the SBA's own review. If a lender denies the application, the borrower may (i) request reconsideration, or (ii) within 30 days of receiving the decision, request that SBA review. The SBA may review any PPP loan or forgiveness application, and borrowers can appeal if the SBA concludes that it is ineligible for a PPP loan, for the loan amount received, or for forgiveness.