

# FREQUENTLY ASKED QUESTIONS ABOUT THE SMALL BUSINESS ASSOCIATION'S PAYCHECK PROTECTION PROGRAM- MAY 14, 2020

The following Frequently Asked Questions are provided for informational purposes. Due to the evolving nature of the loan program, this information is subject to change without notice. This information does not constitute legal advice and First Bank recommends that you consult with your legal, accounting and tax professionals to address any specific questions you may have.

## Applications:

- 1) Is the PPP first come first serve?  
Yes
- 2) Is First Bank accepting applications?  
Yes, please contact your local branch for application instructions.

## Maximum Loan Calculations Questions- Payroll Costs:

- 1) What is included?
  1. Compensation to Employees with principal residence in the United States
    - a. Salary, wages, commissions, or similar compensation,
    - b. Cash tips or the equivalent based on:
      - i. Employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips.
  2. Payment for vacation, parental, family, medical, or sick leave;
  3. Allowance for separation or dismissal;
  4. Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement;
  5. Payment of state and local taxes assessed on compensation of employees
  6. Payroll costs consist of compensation to employees, whose principal place of residence is the United States
- 2) What is excluded?

The CARES Act expressly excludes:

  1. Any compensation of an employee whose principal place of residence is outside of the United States;
  2. The compensation of an individual employee in excess of an annual salary of \$100,000, Pro-rated as necessary;
  3. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including:
    - a. Employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and
    - b. Income taxes required to be withheld from employees; and
  4. Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116-127),
- 3) Is Workers Compensation included in the calculation?  
Workers Compensation is not listed as acceptable category of payroll costs.



## FREQUENTLY ASKED QUESTIONS ABOUT THE SMALL BUSINESS ASSOCIATION'S PAYCHECK PROTECTION PROGRAM- MAY 14, 2020

- 4) Should a business include independent contractors in their calculations?  
No, Independent Contractors can apply for a PPP loan on their own, so they do not count for the purposes of another borrower's PPP loan calculation.
- 5) How to account for employees making > \$100,000 in the payroll calculation?  
Salary up to the \$100,000 any amount over \$100,000 must be excluded
- 6) The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?  
No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:
- a. employer contributions to defined-benefit or defined-contribution retirement plans;
  - b. payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
  - c. payment of state and local taxes assessed on compensation of employees
- 7) Should a borrower apply for less than the maximum amount?  
This is a business owner decision and may be impacted by their decision to retain or bring back laid off workforce. 75% of the forgiveness is based on employment expenses and up to 25% on other allowed purposes including rent, interest on debt obligations and utilities.  
However, given that a borrower may only hold one PPP loan, most borrowers are applying for their maximum loan amount.
- 8) What qualifies as "payroll costs" for an independent contractor or sole proprietor calculation?  
Payroll costs for an independent contractor or sole proprietor are wages, commissions, income, or net earnings from self-employment or similar compensation.
- 9) What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?  
SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

**10) Does the cost of a housing stipend or allowance provided to an employee as part of compensation count toward payroll costs? (NEW)**

Yes. Payroll costs includes all cash compensation paid to employees, subject to the \$100,000 annual compensation per employee limitation.

**Employee Count Questions- PPP application?**

1) How should affiliates count employees?

For purposes of determining whether an Applicant has over 500 employees, an applicant must include the total number of employees of all affiliates and submit this total on each of the affiliate applications.

2) Should I use a Full Time Equivalent?

No, to calculate the total number of employees, you must count all employees (full-time and part-time) and not use full time equivalent.

**Timeframe to use for Payroll Calculation:**

1) What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?

In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019

2) What is the payroll calculation?

a. Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.

b. Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

c. Multiply the average monthly payroll costs from Step 3 by 2.5

d. Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan (because it does not have to be repaid).

3) What is the Seasonal Business calculation timeframe?

For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019.

Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard.

Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

**(NEW)**

**On April 27, 2020, Treasury issued an interim final rule allowing seasonal borrowers to use an alternative base period for purposes of calculating the loan amount for which they are eligible under the PPP. An application that is otherwise in compliance with applicable SBA**

## FREQUENTLY ASKED QUESTIONS ABOUT THE SMALL BUSINESS ASSOCIATION'S PAYCHECK PROTECTION PROGRAM- MAY 14, 2020

requirements, and that complies with Treasury's interim final rule on seasonal workers, will be deemed eligible for a PPP loan under SBA rules. Instead of following the instructions on page 3 of the Borrower Application Form for the time period for calculating average monthly payroll for seasonal businesses, an application may elect to use the time period in Treasury interim final rules.

- 4) What is the New Business that was in operation before 2/15/2020 calculation timeframe?  
An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months)

### Eligibility:

- 1) Can a borrower apply for the PPP if they applied for or received an EIDL or EIDL Advance?  
Yes, if you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.
- 2) Can a borrower apply for more than one PPP loan?  
No
- 3) What are eligibility criteria for Small Business borrowers?
  - a. They have 500 or fewer employees
  - b. These employees principal residence is the United States
  - c. Operating on February 15, 2020 and had
    - i. Employees for whom you paid salaries and payroll taxes, or
    - ii. Paid independent contractors, as reported on 1099-MISC
- 4) Can a business still be eligible for a PPP loan if it has more than 500 employees?  
Yes, if it is:
  - a. A business operating in certain industries
  - b. Meets the applicable SBA employee-based size standards or that industry, and
  - c. Is a small business concern as defined in section 3 of the Small Business Act (15 USC 632) and
  - d. Subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the CARES Act.



## FREQUENTLY ASKED QUESTIONS ABOUT THE SMALL BUSINESS ASSOCIATION'S PAYCHECK PROTECTION PROGRAM- MAY 14, 2020

- 5) What are the categories of business that may have more than 500 employees?  
Franchises and food services may have more than 500 employees. However, they may not have more than 500 employees at any one location.
- 6) Churches and religious nonprofits are usually ineligible for SBA lending programs. How are they eligible for PPP loans?  
Nonprofit organizations otherwise excluded from SBA program, but authorized under the CARES Act, are eligible for PPP loan.
- 7) Are farms eligible to receive PPP loans?  
Yes.  
Farms are addressed under SBA 7(a) loan eligibility and CFR 120.103 allows for a Memorandum of Understanding between USDA and SBA for farm related business loan programs. Additionally, agricultural cooperatives are eligible under CFR 121.105.  
However, farms, agribusiness and agricultural cooperatives must meet the size and revenue standards established by the interim final rule. Lenders should confirm the farm meets the size and affiliation standards for agricultural business based on the Table of Small Business Standards Matched to North American Classification System Codes.
- 8) Are sole proprietorships, independent contractors, and the self-employed eligible for PPP loans?  
Yes, Individuals are eligible for PPP loans if:
- a. They operate as a:
    - i. Sole proprietorship
    - ii. Independent Contractor
    - iii. Eligible Self Employed individual
  - b. They were in operation on February 15, 2020
- 9) **To determine borrower eligibility under the 500-employee or other applicable threshold established by the CARES Act, must a borrower count all employees or only full-time equivalent employees? (NEW)**  
For purposes of loan eligibility, the CARES Act defines the term employee to include “individuals employed on a full-time, part-time, or other basis”. A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold.

### PPP Application Certification (NEW Section)

#### 1) What is a borrower certifying?

Borrowers are to review carefully the required certification on the Borrower Application Form that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA guidance and regulations provide that any borrower who applied for a PPP loan prior to April 24, 2020 and repays the loan in full by May 18, 2020 will be deemed by the SBA to have made the required certification in good faith.



**2) Will the SBA review individual PPP Loan Files?**

Yes.

To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2million, in addition to other loans as appropriate, following the lender's submission for the borrower's loan forgiveness application. Additional guidance implementing this procedure will be forthcoming.

**3) Can a seasonal employer that elects to use a 12 week period between May 1, 2019 and September 15, 2019 to calculate its maximum PPP loan amount under the interim final rule issued by Treasury on April 27, 2020 make all the required certifications on the Borrower Application form?**

Yes. The Borrower Application Form requires applicants to certify that "The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration implementing the Paycheck Protection Program."

**4) Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operation qualify for a PPP loan?**

In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere, borrowers still must certify in good faith that their PPP loan request is necessary. Borrowers must make this certification in good faith, taking 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.

For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

**Loan Related:**

1) When will the loan fund?

The SBA is working to provide loan approval as quickly as it can.

2) What is the interest rate on a PPP loan?

The interest is 100 basis points or 1%.

3) What is the maturity date on a PPP loan?

The maturity is 2 years.

## FREQUENTLY ASKED QUESTIONS ABOUT THE SMALL BUSINESS ASSOCIATION'S PAYCHECK PROTECTION PROGRAM- MAY 14, 2020

- 4) When does a borrower start paying principal and interest on a PPP loan?  
Borrowers do not have to make any payments for six months following the date of disbursement of the loan. However, interest will continue to accrue on PPP loans during this six month deferment.
- 5) How long can a PPP loan payment be deferred?  
PPP loan payments may only be deferred for 6 months.

### Use of PPP Loan Funds

- 1) How can PPP loans be used?  
Proceeds of a PPP loan are to be used for:
  - a. Payroll costs (as defined in the CARES Act and SBA IFR)
  - b. Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
  - c. Mortgage interest payments (but not mortgage prepayments or principal payments)
  - d. Rent payments
  - e. Utility payments
  - f. Interest payments on any other debt obligations that were incurred before February 15, 2020
  - g. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020

### Loan Forgiveness:

- 1) How does a borrower get the entire PPP loan forgiven?  
The borrower will not be responsible for any loan payment if:
  - a. The borrower uses all loan proceeds for forgivable purposes, and
  - b. Employee and compensation levels are maintained
- 2) How is the forgiveness amount calculated?  
The actual amount of loan forgiveness depends, in part, on payments made over the eight-week period following the date of the loan including:
  - a. The total amounts of payroll costs
  - b. Payments of interest on mortgage obligations incurred before February 15, 2020
  - c. Rent payments on leases dated before February 15, 2020
  - d. Utility payments under service agreement dated before February 15, 2020
- 3) How much of the loan forgiveness must be attributable to payroll costs?  
At least 75% of the loan forgiveness amount must be attributed to payroll costs. Not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs.
- 4) Do independent contractors count as employees for purposes of PPP loan forgiveness?  
No. Independent contractors can apply for a PPP loan on their own. They do not count for purposes of a borrower's PPP forgiveness calculation.

**5) Will a borrower's PPP loan forgiveness amount be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer? (NEW)**  
No.

As an exercise of the Administrator's and the Secretary's authority under Section 1106 (d)(6) of the CARES ACT to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offers to rehire (for the same salary/wages and the same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

**6) Which Utility Expenses are eligible in the Forgiveness Calculation?**

Recent SBA guidance on the forgiveness application indicates that covered utility payments include business payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

**7) What are eligible nonpayroll costs in the forgiveness calculation?**

- a. Covered mortgage obligations: payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020
- b. Covered rent obligations: business rent or lease payments pursuant to a lease agreement for real or personal property in force before February 15, 2020
- c. Covered utility payments: business payments for a service for the distribution of electricity, gas, water transportation, telephone, or internet access for which service began before February 15, 2020.

**8) What information is needed to apply for Forgiveness?**

Applicants will complete the SBA Forgiveness Application and submit to their lender.

The following information will be needed to complete the form

- a. Business legal name: Enter the same information as on the Borrower Application form.
- b. Business Address; Phone; Primary contact; email address
- c. SBA PPP Loan number
- d. Lender PPP Loan number
- e. PPP loan amount
- f. Employees at time of application
- g. Employees at time of forgiveness application
- h. PPP loan disbursement date
- i. EIDL application: if borrower applied for an EIDL, enter the EIDL Application number
- j. Payroll Schedule
- k. Covered Period: enter the 8 week covered period of the PPP loan. First date must be the disbursement date or choose the alternative payroll covered period.

**9) What is the covered payroll period?**

The eight-week (56 day) covered period begins on the day that the PPP loan was disbursed. Example, if the borrower received its PPP loan proceeds on Monday, April 20 the first day of the covered period is April 20 and the last day is Sunday, June 14.

**10) What does the Alternate Payroll Covered Period mean?**

For administrative convenience, borrowers with a bi-weekly payroll (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan disbursement date. Example, if the borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, June 20.

**11) Can the amount forgiven be less than the full amount of the PPP loan?**

Yes.  
The actual loan forgiveness amount the borrower will receive may be less, depending on whether the borrower's average weekly number of FTE employees during the Covered Period or the Alternative Covered Period was less than during the Borrower's chosen reference period. The borrower is exempt from such a reduction if the FTE Reduction Safe Harbor applies.

**12) What is the FTE Reduction Safe Harbor?**

A safe harbor under applicable law and regulation exempts certain borrowers from the loan forgiveness reduction based on FTE employee levels. Specifically, the borrower is exempt from the reduction in loan forgiveness based on FTE employees if both of the following conditions are met:

- 1) The borrower reduced its FTE employee levels in the period beginning February 15, 2020 and ending April 26, 2020 and
- 2) The borrower then restored its FTE employee levels by not later than June 30, 2020 to its employee levels in the borrower's pay period that included February 15, 2020.

**Safe Harbor: (NEW)**

**1) Is an employer that repays its PPP loan by the safe harbor deadline (May 18, 2020) eligible for the Employee Retention Credit?**

Yes.  
An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 18, 2020) will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an eligible employer for purposes of the credit.

**2) How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?**

When submitting a PPP application, all borrowers must certify in good faith that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant" SBA, in consultation with the Department of the Treasury, has determined that the following Safe Harbor will apply to SBA's review of PPP loans with respect to this issue:

*Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.*

SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrower that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on large loans, where the compliance effort may yield higher returns.

Importantly, borrowers with loans greater than \$2million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance. SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by the SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form. If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for forgiveness. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request. SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee.

**How do I determine my First Bank Relationship Manager?**

Contact your nearest branch manager; or contact First Bank Service Center 1-800-760-2265; or request help through the Contact Us form on [www.Firstbanks.com](http://www.Firstbanks.com)