



have an online application but may need a few days to go live with the website. Nothing official, but we have heard from some banks that they will be able to allow for the loan application to be processed and later have the funds become available upon request (prior to 6/30).

**Once approved, talk to your Rosen partner before you sign and take the proceeds so we can strategize on timing. Make sure your bank will allow you some breathing room, from application approval date to closing date of loan/proceeds given.**

**Below is a summary of the Interim Final Rule (SBA 020-0015 – 13 CFR Part 120) issued Thursday evening. Please note the application process appears to have been simplified compared to previous guidance you may have received. Contact your lender and read below to understand the details.**

### **Questions & Answers**

**Am I eligible?**

Most businesses are eligible for a PPP loan if you have 500 or fewer employees in the US and were in operation on 2/15/20. Affiliation rules apply.

**I'm an independent contractor – am I eligible?**

Yes, and you must submit documentation such as 1099-MISC received.

**How much can I borrow?**

1. Aggregate payroll cost (see below)
2. Subtract any compensation paid to an employee or owner (including self-employed) in excess of annual salary of \$100,000
3. Divide by 12
4. Multiply by 2.5
5. Add the outstanding amount of an EIDL made between 1/31/20 and 4/3/30, less the advance if received. (unlikely)

**What are my payroll costs?**

Compensation to employees, employer portion of payments for group health insurance, retirement, state taxes on compensation (State unemployment and PFML, if applicable), and your net income from being self-employed (does not include 1120S K-1 income)

**What is excluded from payroll costs?**

Compensation in excess of annual salary of \$100,000

**Can I include payments to independent contractors as compensation?**

No, independent contractors have the ability to apply for a PPP loan on their own.

**What is the interest rate on a PPP loan?**

1% (previously reported as 0.5%, this has changed)

### **What is the maturity date?**

Two years (previously reported as 10 years, this has changed)

### **Can I apply for more than one PPP loan?**

A business (EIN) can only apply for one PPP loan. If you own multiple businesses, they may be eligible to apply individually but must be disclosed in the affiliation section of the application (Question)

### **Can I use e-signatures?**

Yes

### **Is the PPP loan first come, first served?**

Yes

### **When do I start making payments on a PPP loan?**

Interest accrued when funds are disbursed, but payment is not due for 6 months.

### **Can my PPP be forgiven?**

Yes, if the loan is used on eligible costs and employee and compensation levels are maintained. At least 75% of the costs must be for payroll costs to obtain forgiveness. The SBA will issue additional guidance on forgiveness. Although not stated in the final rule, the Act states the funds must be used within 8 weeks of receiving the loan to be forgiven.

### **What are eligible costs?**

1. Payroll costs (defined above)
2. Group health care benefits
3. Mortgage interest payments (not prepayments or principal)
4. Rent, on a lease dated before 2/15/20
5. Utility payments, under service agreements dated before 2/15/20
6. Interest payments on debt obligations incurred before 2/15/20

### **I incurred eligible costs before receiving the loan, can I reimburse myself?**

The SBA will issue additional guidance but under the Act the funds must be used within the 8 weeks following receiving the loan and prior expenses would not be eligible.

### **What forms do I need and how do I submit an application?**

1. SBA Form 2483- Paycheck Protection Program application form
2. Payroll documentation

### **What if the PPP funds are misused?**

If misused, you will be subject to additional liabilities and possibly charges for fraud

### **What certifications must be made? (summary below)**

1. The applicant was in operation on 2/15/20 and had employees
2. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant (Due to COVID-19 this is a near certainty for any practice)
3. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments. Failure to do so could result in fraud charges.
4. Documentation to verify the number of employees as well as the eligible costs incurred for the eight week period following the loan will be provided to the lender.
5. Loan forgiveness will be provided for the sum of documented costs. Not more than 25% of the forgiven amount may be for non-payroll costs.
6. The applicant has not and will not receive another loan under this program.
7. The information is true and accurate.
8. The tax documents provided are identical to ones filed with the IRS.

### **What payroll costs do I use?**

The lenders are required to confirm the average monthly payroll costs for the preceding calendar year (2019)

### **What other information do I need to provide?**

Lenders may need to include a customer identification program

### **Items not in the guidance but questions that have come up:**

#### **My business opened during 2019, what numbers do I use?**

For new businesses (that were not in business from 2/15/19 – 6/30/19), average monthly payroll may be calculated using the time period from 1/1/20 to 2/29/20. You should use this period it, annualize it for the calculation and then reduce for the annualized \$100,000 per employee limitation.

#### **What bank should I use?**

Start with a bank you already conduct business with. This program isn't highly profitable for banks but they are providing this service to help their customers stay in business. They are more likely to assist existing customers first.

#### **Should I apply through multiple banks?**

No, as part of the application you must certify that you do not have any other pending applications for this program.

## **What is my business type?**

Look at your tax return:

- Schedule C (form 1040) – Sole proprietor or LLC if you have organized an LLC under state law.
- 1065 – Partnership
- 1120S – S corporation
- 1120 – C corporation

## **What do I list for the number of employees?**

We don't know. We think it should be FTE's however we think banks will just be counting W-2s. Because the 2019 number shouldn't directly impact the forgiveness calculation, we expect you will use the 2019 number of W-2's just so that it makes the loan application process go smoothly. This would include spouse and other related party W-2s. We think this is just to verify that the number is 500 or less. Please ask your lender what number they expect should be used.

## **What are the state taxes do I include?**

Total payroll in line one already includes state income tax withheld. This is not a tax of an employer, this is just part of the employee's payroll so you do nothing special with this. The state taxes you add to your payroll cost are the state tax you pay as an employer which means for most businesses, State Unemployment taxes (SUTA). You can find this information on your website. Some businesses are required to pay additional taxes, such as an employer portion (not the employee portion) of Paid Family Medical Leave taxes. Again, this is the employer portion only, not the employee's withholding. Your payroll company should be able to provide these figures.

## **Where do I include rent, utilities, and mortgage interest in the loan request?**

These are not part of the loan application. The loan is based on 2.5 months (about 11 weeks) of payroll costs. You may then use it for 8 weeks of payroll, rent, utilities, and mortgage interest. The additional weeks in the calculation are meant to cover these overhead expenses.

## **How do I track my costs?**

We recommend you create a new bank account to track the deposit and use of the funds. Documentation is required.

## **How does this impact my pending EIDL grant?**

We don't know – the EIDL grant was supposed to come out as emergency funds and then the PPP later provide working capital to cover payroll and overhead for two months. However the administration rushed the PPP loan and is making the application available before anyone has received the EIDL grant. We believe this means the EIDL loan may not be able to be refinanced into the PPP loan.

## **My partnership is owned by two S corps, do the S corps need to apply for their own loan?**

The S corporation owners receive a W-2 through their own PC and those wages can't be included in the partnership application. The S corp owner can file its own PPP application or an EIDL application with similar results.

**My partnership is owned by two individuals, do I include their K-1 income in payroll costs?**

We don't know. However it is reasonable to assume that since a business includes the income of the sole proprietor, that the partnership should also include the K-1 income (limited to \$100k per partner). This is a good faith answer to a question not answered (yet) in the instructions. We recommend pointing this out to your lender and asking what they will treat as acceptable under their procedures as they will need to review and approve the application with the payroll documentation provided.

**When can I apply?**

Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.

Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.

**Why is my bank requesting additional information?**

This is new and banks are doing their best to answer questions even if they don't know answers. According to the final rules an applicant needs to complete the application, provide payroll records, and may need to verify their identity/business.

**What do I do with the funds if I receive them and the Practice is not open yet?**

You will have 8 weeks from the loan origination date to spend the funds and qualify for loan forgiveness (subject to additional rules to be issued by the SBA). If not used during the 8 weeks, they can be used in future periods, just not forgiven. You may rehire employees even if the practice isn't open so that they are ready and available when needed or you may have working capital for later in the year to cover eligible costs.

**My employees will be receiving more from unemployment than they will be receiving pay, why will they come back?**

As the Treasury Secretary mentioned yesterday, if someone refuses work (pay), they are no longer eligible for unemployment. Further, people who have been recently let go will be excited to have a paycheck again. There is so much uncertainty now that anyone that you want to be part of your team will gladly accept a paycheck over unemployment.

**As the owner, I was advised to stop taking a paycheck. How does this impact this decision?**

As of the loan origination date, the owner (and employees) should go back onto payroll for the 8 week period if you want to maximize loan forgiveness (subject to additional rules to be issued by the SBA)

**My employees have been collecting unemployment for the last few weeks, will my unemployment insurance tax rate go up?**

Yes, your rate will go up and you will pay more in unemployment tax.

**Where can I learn more?**

<https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>

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