



CARES ACT (CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT)

TBK BANK | PAYCHECK PROTECTION PROGRAM FOR SMALL BUSINESS

FREQUENTLY ASKED QUESTIONS

JUNE 24, 2020, 9:00AM

OVERVIEW

The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses affected by the COVID-19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the “Paycheck Protection Program.” Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. The following outlines the key provisions of the PPP.

The Paycheck Protection Program provides small businesses with funds to pay up to 8 weeks of payroll costs including benefits. Funds can also be used to pay interest on mortgages, rent, and utilities. As a certified SBA lender, TBK Bank is able to help eligible businesses.

GENERAL OVERVIEW

SBA is authorized to guarantee loans under the PPP through June 30, 2020. Congress authorized a program level of \$349,000,000,000 to provide guaranteed loans under this new 7(a) program.

The intent of the Act is that SBA provide relief to America’s small businesses expeditiously, which is expressed in the Act by giving all lenders delegated authority and streamlining the requirements of the regular 7(a) loan program.

For example, for loans made under the PPP, SBA will not require the lenders to comply with section 120.150 “What are SBA’s lending criteria?.”

SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness. Lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers’ failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in this interim final rule. The program requirements of the PPP identified in this rule temporarily supersede any conflicting Loan Program Requirement (as defined in 13 CFR 120.10).

WHAT DO BORROWERS NEED TO KNOW AND DO?

Am I eligible?

You are eligible for a PPP loan if you have 500 or fewer employees whose principal place of residence is in the United States, or are a business that operates in a certain industry and meet the applicable SBA employee-based size standards for that industry, and:



i. You are:

A. A small business concern as defined in section 3 of the Small Business Act (15 USC 632), and subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act;

B. A tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business; and

ii. You were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.

You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual, you were in operation on February 15, 2020.

You must also submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

Could I be ineligible even if I meet the eligibility requirements in (a) above?

You are ineligible for a PPP loan if, for example:

- i. You are engaged in any activity that is illegal under federal, state, or local law;
- ii. You are a household employer (individuals who employ household employees such as nannies or housekeepers);
- iii. An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony involving fraud, bribery, embezzlement, or a false statement in a loan application for federal financial assistance within the last five years or any other felony within the last year;
- iv. You, or any business owned or controlled by you or any of your owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government.

The Administrator, in consultation with the Secretary of the Treasury (the Secretary), determined that household employers are ineligible because they are not businesses. 13 CFR 120.100.

How do I determine if I am ineligible?

Businesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, except that nonprofit organizations authorized under the Act are eligible. (SOP 50 10 can be found at



<https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs>.)

I have determined that I am eligible. How much can I borrow?

Under the PPP, the maximum loan amount is the lesser of \$10 million or an amount that you will calculate using a payroll-based formula specified in the Act, as explained below.

How do I calculate the maximum amount I can borrow?

The following methodology, which is one of the methodologies contained in the Act, will be most useful for many applicants.

- i. **Step 1:** Aggregate payroll costs (defined in detail below in f.) from the last twelve months for employees whose principal place of residence is the United States.
- ii. **Step 2:** 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.
- iii. **Step 3:** Calculate average monthly payroll costs (divide the amount from Step 2 by 12).
- iv. **Step 4:** Multiply the average monthly payroll costs from Step 3 by 2.5.
- v. **Step 5:** 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).

The examples below illustrate this methodology.

- i. **Example 1** – No employees make more than \$100,000

Annual payroll: \$120,000

Average monthly payroll: \$10,000

Multiply by 2.5 = \$25,000

Maximum loan amount is \$25,000

- ii. **Example 2** – Some employees make more than \$100,000

Annual payroll: \$1,500,000

Subtract compensation amounts in excess of an annual salary of \$100,000: \$1,200,000

Average monthly qualifying payroll: \$100,000

Multiply by 2.5 = \$250,000

Maximum loan amount is \$250,000

- iii. **Example 3** – No employees make more than \$100,000, outstanding EIDL loan of \$10,000.

Annual payroll: \$120,000

Average monthly payroll: \$10,000

Multiply by 2.5 = \$25,000

Add EIDL loan of \$10,000 = \$35,000

Maximum loan amount is \$35,000

- iv. **Example 4** – Some employees make more than \$100,000, outstanding EIDL loan of \$10,000

Annual payroll: \$1,500,000

Subtract compensation amounts in excess of an annual salary of \$100,000: \$1,200,000

Average monthly qualifying payroll: \$100,000

Multiply by 2.5 = \$250,000

Add EIDL loan of \$10,000 = \$260,000

Maximum loan amount is \$260,000

What qualifies as “payroll costs?”

Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

Is there anything that is expressly excluded from the definition of payroll costs?

Yes. The Act expressly excludes the following:

- i. Any compensation of an employee whose principal place of residence is outside of the United States;



- ii. The compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary;
- iii. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees; and
- iv. 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).

Do independent contractors count as employees for purposes of PPP loan calculations?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan calculation.

What is the interest rate on a PPP loan?

The interest rate will be 100 basis points or one percent.

What will be the maturity date on a PPP loan?

The maturity is two years for loans approved by SBA before June 5th and 5 years for loan approved thereafter.

Can I apply for more than one PPP loan?

No.

Can I use e-signatures or e-consents if a borrower has multiple owners?

Yes, e-signature or e-consents can be used regardless of the number of owners.

Is the PPP "first-come, first-served?"

Yes.

When will I have to begin paying principal and interest on my PPP loan?

You will 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

Can my PPP loan be forgiven in whole or in part?

Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and employee and compensation levels are maintained.

The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to non- payroll costs.



While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll.

The Administrator has determined in consultation with the Secretary that 60 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Limiting non-payroll costs to 40 percent of the forgiveness amount will align these elements of the program, and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

Do independent contractors count as employees for purposes of PPP loan forgiveness?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan forgiveness.

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

The applicant must submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation, as described above.

How can PPP loans be used?

The proceeds of a PPP loan are to be used for:

- i. payroll costs (as defined in the Act and in 2.f.);
- ii. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- iii. mortgage interest payments (but not mortgage prepayments or principal payments);
- iv. rent payments;
- v. utility payments;
- vi. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
- vii. refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. 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.

However, at least 60 percent of the PPP loan proceeds shall be used for payroll costs.

What happens if PPP loan funds are misused?

If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

What certifications need to be made?

On the Paycheck Protection Program application, an authorized representative of the applicant must certify in good faith to all of the below:¹

- i. The applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.
- ii. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.
- iii. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable such as for charges of fraud. As explained above, not more than 40 percent of loan proceeds may be used for non-payroll costs.
- iv. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender.
- v. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. As explained above, not more than 40 percent of the forgiven amount may be for non-payroll costs.
- vi. During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.
- vii. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- viii. I acknowledge that the lender will confirm the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

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¹ A representative of the applicant can certify for the business as a whole if the representative is legally authorized to do so.

WHAT DO BOTH BORROWERS AND LENDERS NEED TO KNOW AND DO?

What are the loan terms and conditions?

Loans will be guaranteed under the PPP under the same terms, conditions and processes as other 7(a) loans, with certain changes including but not limited to:

- i. The guarantee percentage is 100 percent.
- ii. No collateral will be required.
- iii. No personal guarantees will be required.
- iv. The interest rate will be 100 basis points or one percent.

Are there any fees?

There will be no up-front guarantee fee payable to SBA by the Borrower.

ADDITIONAL INFORMATION

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at www.sba.gov.

Questions on the Paycheck Protection Program 7(a) Loans may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

WHAT IF I NEED IMMEDIATE ASSISTANCE?

There are also other ways business owners can get assistance, including:

- **Economic Injury Disaster Loans & Emergency Economic Injury Grants (EIDL)**
 - EIDLs are lower interest loans of up to \$2 million, with principal and interest deferment at the Administrator's discretion, that are available to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.
 - Businesses with 500 or fewer employees are eligible, including sole proprietorships, with or without employees, Independent contractors, Cooperatives and employee owned businesses and Tribal small businesses. Small business concerns and small agricultural cooperatives that meet the applicable size standard for SBA are also eligible, as well as most private non-profits of any size.
- Emergency advance of up to \$10,000 to small businesses and private non-profits harmed by COVID-19 within three days of applying for an SBA Economic Injury Disaster Loan (EIDL).
- To access the advance, you first apply for an EIDL and then request the advance. The advance does not need to be repaid under any circumstance, and may be used for:
 - keep employees on payroll

- to pay for sick leave
 - meet increased production costs due to supply chain disruptions
 - or pay business obligations, including debts, rent and mortgage payments
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- An entity that receives an EIDL and/or an Emergency Economic Injury Grant, may also apply for a PPP loan. If an entity also receives a PPP loan or refinances an EIDL into a PPP loan, any advance amount received under the Emergency Economic Injury Grant Program would be subtracted from the amount forgiven in the PPP.
 - An entity cannot use EIDL proceeds for the same purpose as a PPP loan. For example, if a business uses an EIDL to cover payroll for certain workers in April, it cannot use PPP for payroll for those same workers in April, although they could use it for payroll in March or for different workers in April.

Economic Injury Disaster Loans & Emergency Economic Injury Grants (EID) are not offered through TBK Bank, but you can apply online by visiting the SBA website: <https://www.sba.gov/funding-programs/disaster-assistance>

Small Business Debt Relief Program

This program will provide immediate relief to small businesses with non-disaster SBA loans, in particular 7(a), 504, and microloans. Under it, SBA will cover all loan payments on these SBA loans, including principal, interest, and fees, for six months. This relief will also be available to new borrowers who take out loans within six months of the President signing the bill into law.

- Loans eligible for debt relief under this program: 7(a) loans not made under the (PPP), 504 loans, and microloans. Disaster loans are NOT eligible.
 - 7(a) loans are affordable loan products of up to \$5 million for borrowers who lack credit elsewhere and need access to versatile financing, providing short-term or long-term working capital and to purchase an existing business, refinance current business debt, or purchase furniture, fixtures and supplies. In the program, banks share a portion of the risk of the loan with SBA. There are many different types of 7(a) loans, you can visit this site to find the one that's best for you. You apply for a 7(a) loan with a bank or a mission-based lender. SBA has a free referral service tool called Lender Match to help find a lender near you.
 - The 504 Loan Program provides loans of up to \$5.5 million to approve small businesses with long-term, fixed-rate financing used to acquire fixed assets for expansion or modernization. It is a good option if you need to purchase real estate, buildings, and machinery. You apply through a Certified Development Company, which is a nonprofit corporation that promotes economic development. SBA has a free referral service tool called Lender Match to help find a lender near you.
 - The Microloan Program provides loans up to \$50,000 to help small businesses and certain not-for-profit childcare centers to start up and expand. The average microloan is about \$13,000. These loans are delivered through mission-based lenders who are also able to provide business counseling. SBA has a free referral service tool called Lender Match to help find a micro lender near you.

- Eligibility for a 7(a), 504, or microloan: In general, businesses must meet size standards, be based in the U.S., be able to repay, and have a sound business purpose. To check whether your business is considered small, you will need your business's 6-digit North American Industry Classification System (NAICS) code and 3-year average annual revenue. Each program has different requirements, see <https://www.sba.gov/funding-programs> for more details.
- Borrowers may separately apply for and take out a PPP loan, but debt relief under this program will not apply to a PPP loan.

**SBA resource partners are available to help guide you through the loan application process.
To find your nearest resource, visit**

<https://www.sba.gov/local-assistance/find/?type=Small%20Business%20Development%20Center&pageNumber=1>