

I. LOAN APPLICATIONS

Q. How do we find participating lenders?

A. Participating lenders are listed on SBA's website: <https://www.sba.gov/paycheckprotection/find>

Q. Given that there will be intense competition for these funds, has the SBA established a prioritization, or is it first come first serve?

A. It is first come first serve.

II. LOAN AMOUNTS

Q. If the Statewide Emergency period is extended, will the maximum amount that may be borrowed / period of coverage of payroll expenses increase?

A. No, the Payroll Protection Program is a federal program and part of the Coronavirus, Aid, Relief and Economic Security Act (CARES Act). The terms of the program can only be changed by an act of Congress, not by any action taken by New York State.

Q. What time period should I look at when determining my average payroll (is it one year prior)?

A. For most applicants the average payroll will be determined using payroll costs for the 12 months prior to origination date of the loan. Seasonal employers can choose the average payroll between either February 15, 2019 through June 30, 2019 or March 1, 2019 through June 30, 2019. New organizations that were not operational February 15, 2019 and June 20, 2019 can use the time period January 1, 2020 – February 29, 2020.

Q. What are considered payroll costs?

A. Small Business Administration (SBA) Interim Final Rules for PPP provide the following guidance:

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.

The Interim Final Rules say that these costs are excluded from the calculation of payroll:

- Any compensation of an employee whose principal place of residence is outside of the United States;
- The compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary;
- 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

- 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).

Q. Does employer paid life insurance count under the payroll costs? Also does mileage paid as part of payroll count?

A. Neither life insurance costs or mileage reimbursement appear to be factored into payroll expenses. The answer to the previous provides the guidance from the SBA on what are considered payroll costs.

Q. Should FICA be included in payroll total?

A. No FICA should not be included in payroll costs. The SBA Interim Final Rules provide that 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, are not included in payroll.

Q. What can be included in the PPP loan in terms of benefits – medical and dental? Can we include the full amount of the costs? In other words, can we include the amount the employee pays and the portion that the employer contributes towards the medical/dental costs?

A. If the employees will remain responsible for their contributions to health care costs, only the employer’s cost for health benefits should be included in payroll costs for purposes of PPP.

Q. If we laid off staff, not knowing this was going to be offered, can we still apply for the staff that we kept on?

A. Yes. To encourage employers to rehire any employees who have already been laid off and to restore wages that have been reduced between February 15, 2020 and April 26, 2020 due to the COVID-19 crisis, borrowers that re-hire workers previously laid off or restore salaries will not be penalized for having a reduced payroll at the beginning of the period if headcount and salary levels are restored by June 30, 2020.

The maximum loan value the organization is eligible to apply for is 2.5x your average monthly payroll for the last twelve-month period with certain costs excluded. In order to have the full value of the loan forgiven the proceeds must be spent on payroll plus health and retirement benefits, mortgage interest, interest on debt incurred before February 15, 2020, rent, and utilities. However, no more than 25% of the loan proceeds can be forgiven if used on expenses other than payroll.

So, if you want to have the full value of the loan forgiven you can apply for the maximum loan, rehire the staff you laid off, and pay the related payroll costs for 8 weeks. Alternatively, you could request a smaller loan aligned with your present payroll costs.

Q. Is there a difference between a worker who is furloughed or laid off?

A. No. If your organization has a worker who is currently not on payroll you can return them to the workforce and if they work for the 8-week period have their salary forgiven.

Q. Do you have to rehire the same people or can you hire someone else for the position?

A. The SBA Interim Final Rules state that “[l]oan forgiveness will be provided for the sum of documented payroll costs.” The focus appears to be on payroll costs rather than on whether the same workers are earning that salary during this period.

Q. When should a furloughed employee apply for unemployment insurance or should they not at all because we will be able to continue to pay them?

A. A furloughed employee should apply for unemployment insurance as soon as they are eligible. Here is a link to the New York State Department of Labor website: https://labor.ny.gov/ui/how_to_file_claim.shtm

In the event that the organization succeeds in securing a PPP loan you and can rehire any staff that was laid off and they work for the 8 week period after the loan is received the salary paid can be part of the portion the loan that is forgiven.

Q. I have someone who works 2 hours per week. Do they have enough to be covered? Should I be continuing to pay?

A. The PPP covers the salary of both full-time and part-time staff.

III. LOAN ELIGIBILITY

Q. Are you eligible for PPP is your headcount exceeds 500 employees and you are a 501(c)(3)?

A. No, organizations with more than 500 employees are not eligible for PPP. You may want to consider the Economic Injury Disaster Loan Program <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>

Q. Our not-for-profit contracts out our payroll to SUNY Research Foundation (which has over 15,000 employees) so technically we pay the Research Foundation to run our payroll for just 16 people. Do we qualify?

A. It will depend on the terms of the relationship between SUNY Research Foundation and your organization and which organization is considered the employer. The SBA has affiliation rules which determine when organizations are “under common control” and, therefore aggregate their employees to determine eligibility under SBA rules. Just sharing common administrative services such as bookkeeping, payroll, recruiting, other human resource support, cleaning services may not be evidence of affiliation between organizations. Activities that can be reasonably pooled or otherwise performed by a related entity without interfering in contract performance or management will not considered under the affiliation rules. 13 CFR §121.03(b)(2)(ii)(A).

Q. Do we need to prove that we will not have other funds or revenues available to cover payroll costs?

A. No, but as part of the application the organization will have to certify in good faith that: Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.

Q. If we have access to a line of credit or other sources, does that preclude us from the PPP program?

A. No, but as part of the application the organization will have to certify in good faith that: Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant. PPP loan terms are very favorable so it may make sense to apply for a PPP loan rather than using a line of credit.

IV. LOAN TERMS

Q. Is PPP a loan or a grant program?

A. The PPP is a loan program but if funds are used according to the program rules up to the full value of the loan and accrued interest can be forgiven.

Q. What are you expected to pay back?

A. The organization will have to pay back the full amount of the loan and interest charged unless it meets

For more information, please visit esd.ny.gov

the program requirements for loan forgiveness. The full amount of the loan plus interest charged will be forgiven if the funds are used to pay eight weeks of actual payroll costs. In addition, up to 25% of non-payroll costs for the items set out below will be forgiven:

- Payment of interest on mortgage obligations (but not principal) incurred before February 15, 2020
- Payment of rent under lease agreements in force before February 15, 2020
- Payment of utilities for which service began before February 15, 2020.

Loan proceeds used for any other purposes will not be forgiven and no more than 25% of non-payroll costs can be forgiven.

If the organization lays off employees after receiving the loan, the forgiveness will be reduced by the percent decrease in the number of employees. If the organization's total payroll expenses on workers making less than \$100,000 annually decreases by more than 25 percent, loan forgiveness will be reduced by the same amount.

If the organization has already laid off some employees, you can still be forgiven for the full amount of your payroll cost if you rehire your employees by June 30, 2020.

Q. Can you use the funds for salary enhancements for employees that are on the front lines of the fight?

A. The regulations are silent on use of loan proceeds and loan forgiveness for staff salary enhancements. However, the regulations do indicate that if you use pay your staff 8 weeks of payroll and do not either lay staff off or reduce compensation and spend no more than 25% of loan proceeds on allowable costs other than payroll the full value of the loan will be forgiven. So, if an organization was to spend additional funds on salaries they should be eligible for loan forgiveness.

Q. Is there a penalty for paying the loan off early?

A. No, there are no prepayment penalties.

Q. Is it 1% each year, or for the entirety of the loan? Is there forgiveness?

A. The loan is a two-year term loan at 1% interest. The regulations provide for deferred loan payments for 6 months. The full amount of the loan will be forgiven if the borrower satisfies the terms of the program.

Q. How will lenders verify that loans awarded were actually used as stated in the application so they can be converted to grants?

A. The Interim Final Rules say that the SBA will come out with more guidance on loan forgiveness. The organization should maintain records that evidence use of the loan proceeds to pay allowed expenses.

The SBA Interim Final Rules state:

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.

Q. What happens after June 30th? I have read this can be extended for another 12 months?

A. June 30, 2020 is the deadline to apply for PPP. Because the funds are available on a first come first serve basis organizations are encouraged to apply as soon as possible. The program provides that loan payments will be deferred for 6 months.