

UPDATE!

This past week Congress passed and on Friday the President signed into law a bill that revises SBA's Paycheck Protection Program (PPP), one of the Federal Government's main COVID relief programs for small business (including the self-employed) and nonprofits. The improvements contained in the "PPP Flexibility Act" won't satisfy everyone, but the bottom line is, **the program is more flexible now than before.**

If your business hasn't received a PPP loan yet, now is the time to consider applying. Read about the new provisions below, and if you are still interested, there is guidance that follows on how to go about applying.

If your business has already received a PPP loan, you cannot get a second loan. But read about the new provisions below and watch for more guidance in the coming days. You may well be benefit from the new flexibility that has just been added to the program.

NEW PROVISIONS OF THE PAYCHECK PROTECTION PROGRAM (PPP)

The following is a recap of the PPP program and its changes under the Act. To illustrate the changes, I've put **the new rules in this font**, and ~~the old rules in this font~~.

PPP is a forgivable loan from your business's banking institution or other commercial lender for an amount equal to your business's typical 2-1/2 months' payroll. (This calculation for determining loan size is here:

<https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf>.)

Eligible borrowers include small businesses, including agricultural operations, and nonprofits, including faith-based organizations.

The loan may only to be used to pay payroll, business rent/mortgage interest, or utilities – nothing else. You have ~~8-week~~ **24 weeks** to use the loan funds. This is called your "covered period".

After the ~~8-weeks~~ **24 weeks** you apply to your lender for loan forgiveness. If you can show that at least ~~75%~~ **60%** of the loan was indeed used for payroll and not more than ~~25%~~ **40%** was used for the other authorized purposes, the loan is forgiven by the lender.

To get loan forgiveness, there are some rules you need to follow:

- **It looks like it could be *mandatory* to use *at least 60%* of the loan for payroll in order to get *any* loan forgiveness at all. So, for instance, using more than 40% of the loan to pay for rent, mortgage interest and/or utilities may now disqualify you from getting *any* loan forgiveness. (Everyone will be watching for clarification about this.)**
- Loan forgiveness is proportionally reduced if you don't hire back up to the level of full-time employees you had before the COVID disruption by ~~June 30~~ **December 31**. However, if you can show you made a good faith effort to staff back up but couldn't find workers willing to work, **OR if you can show your business is not able to return to its previous level of business activity due to COVID health and safety restrictions**, you will be exempted from this proportional reduction in loan forgiveness.
- Loan forgiveness is also proportionally reduced if you cut the wages of any workers to less than 75% of their wage level before the COVID disruption and you haven't restored each of their wages up to at least the 75% level by ~~June 30~~ **December 31**.
- Loan forgiveness is also reduced by the amount of any SBA Economic Injury Disaster Loan (EIDL) "Advance" payment (which is a grant) your business received as COVID relief. Only the EIDL Advance counts against PPP loan forgiveness, not the EIDL Loan.

If any of your loan is not forgiven, the unforgiven balance must be repaid at 1% interest over a ~~2-year~~ **5-year** term, with the first payment deferred ~~for 6 months~~ **until after the end of the 24-week covered period plus the time it takes for the lender to be refunded by SBA for the loan forgiveness amount [6-10 months?]**. **If you just neglect to seek loan forgiveness, payments start 10 months after the end of your covered period.**

Neither collateral nor personal guaranties are required, and there is no "means test" to qualify.

All the rules ~~are~~ **either are or will be** published here:

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

SO, IF YOU HAVEN'T RECEIVED A PPP LOAN YET:

If your business needs a loan to keep its operations afloat in the face of the COVID disruption, **now is the time to get a PPP loan.**

There is still more than \$100 billion of PPP loan funding remaining. Over the past week, there were relatively few new PPP loans approved, totaling less than half a billion all week. But with the new improvements, there could be much greater demand for the remaining funds. So, plan to apply with your lender early in the coming week. It appears that the last day to get a PPP loan will be June 30, or whenever the funding is expended. Once the remaining funds are exhausted, it seems unlikely that additional funds will be allocated.

To get a PPP loan, you need to find a commercial lender making PPP loans. The best place to start looking for a PPP loan is still your existing business banking institution. If your main business bank isn't offering PPP loans, do you have any other business banking relationships? That might be the good alternative. Otherwise, here is a link to lenders eligible to offer PPP – <https://www.sba.gov/paycheckprotection/find>. SBA posted a list of the lenders who made PPP loans with the last round of funds in each state here:

<https://www.sba.gov/document/support--paycheck-protection-program-participating-lenders> (but be aware that this isn't a list of all eligible PPP lenders). You might want to focus on small local banks, credit unions, and CFDI's. Here's one link I found ranking banks by asset size: <https://www.usbanklocations.com/bank-rank/total-assets.html>.

Finally, you also may want to try some of the fintech lenders that were approved to offer PPP loans: PayPal, Intuit/Quickbooks, Square, OnDeck, Funding Circle, Kabbage, and Bluevine. Nearly all lenders typically accept applications online. In addition to the easy 2-page PPP application –

<https://www.sba.gov/document/sba-form--lender-application-form-paycheck-protection-program-loan-guaranty-0> – the only other information needed to apply is documentation showing your typical monthly payroll cost. The “How to Calculate Maximum Loan Amounts by Business Type” information sheet –

<https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf> – explains what documents are needed for this.

IF YOU ALREADY HAVE A PPP LOAN:

You cannot apply for a second PPP loan. You must make do with the PPP loan you have. For businesses that have PPP loan already, and especially those that have PPP loan funds unspent, it appears that much of the new latitude in the PPP Flexibility Act with regard to use of PPP funds and loan forgiveness requirements applies to them.

However, existing PPP borrowers have been operating under the old rules (i.e., those indicated above using "~~this font~~"), and many are approaching or even at the end of their 8-week "covered period" and have already used some or all of their PPP funds with the old rules in mind. The Act does mention that if you want to remain under the original 8-week "covered period" for using your loan funds, you may do so.

Existing PPP borrowers are also already obligated under a PPP promissory note with a 2-year term, and that note is a contract that is not changed by the Act. The Act does mention that an existing PPP loan may be modified to one with a 5-year term if both the business borrower and the lender mutually agree.

Beyond this, I think it's better not to draw too many conclusions. SBA and Treasury will be providing guidance in the coming days on how the changes in the PPP Flexibility Act apply to those who already have a PPP loan. We will all be watching for that.

Stay tuned, safe, and well,

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