The following information has been adapted from the Small Business Administration's (SBA) Paycheck Protection Program Borrower Information Fact Sheet to provide information tailored for nonprofits.

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PAYCHECK PROTECTION PROGRAM (PPP) INFORMATION SHEET: NONPROFIT BORROWERS

Updated on August 28, 2020

The Paycheck Protection Program closed on August 8. The SBA is no longer accepting new applications from participating lenders. The following FAQs are for informational purposes only and to assist borrowers who obtained PPP loans with their loan forgiveness applications.

What is the Paycheck Protection Program?

The Paycheck Protection Program ("PPP") is a loan program created by the federal CARES Act, which authorized $349 billion in forgivable loans to nonprofits, among other business entities, to pay their employees and cover certain other core expenses during the COVID-19 crisis.

The first wave of PPP funding was exhausted on April 16, 2020. The government approved $310 billion of new funding for the PPP on April 24, 2020. On April 27, 2020, the SBA resumed accepting PPP applications from participating lenders. About one fifth of the second round of PPP funding was earmarked for smaller banks, smaller credit unions, and community financial institutions that provide financing to underserved and economically disadvantaged communities.

The CARES Act was substantially amended on June 5, 2020, with the enactment of the Paycheck Protection Program Flexibility Act of 2020 (the "Flexibility Act"). The Flexibility Act updated many aspects of the PPP. As suggested by its name, the law was intended to give PPP borrowers more flexibility in when and how they spend their PPP funds. Flexibility Act updates are included below.

On July 4, 2020, the Paycheck Protection Program Extension Act (the "Extension Act") was enacted. The Extension Act extended the PPP application deadline from June 30 to August 8, 2020.

The PPP closed on August 8, 2020, with over $130 billion of unused funds remaining in the program. New applications for PPP loans will not be accepted unless Congress acts to extend the program. Borrowers who applied for and received a PPP loan have 10 months from the end of their covered loan period to apply for loan forgiveness.

How large can my loan be?

Loans can be for up to 2.5 times your average monthly payroll costs from the last year (either the previous 12 months or calendar year 2019). That amount is subject to a $10 million cap. Payroll costs are capped at $100,000 per year for each employee (note: an employee's cash compensation above $100,000 is not counted as part of the nonprofit's payroll costs when calculating the amount of the loan, but the full cost of that employee's benefits is counted).

Payroll costs are calculated on a gross basis without regard to federal taxes imposed or withheld. In other words, payroll cost is not increased by the employer's share of payroll tax or reduced by taxes imposed on an employee and required to be withheld by the employer.

Are the loans forgivable?

Flexibility Act Update: The loan amounts will be forgiven so long as:

- the loan is used to cover payroll costs, interest on mortgage, rent, and utility costs over the 24-week period after the loan is made or by December 31, 2020, whichever is earlier; and
- employee and compensation levels are maintained.

(Before the enactment of the Flexibility Act, to qualify for full forgiveness borrowers had to spend the funds over the 8-week period after the loan was made. The Flexibility Act gives borrowers the option to spend the funds over a longer period. Borrowers whose PPP loan was approved prior to the enactment of the Flexibility Act may keep the original 8-week period if they choose. Most businesses will find the 24-week period preferable, but some may wish to retain the original 8-week period so as to submit the forgiveness application as soon possible.)

Originally, the SBA indicated that at least 75% of the forgiven amount had to be used for payroll costs. The Flexibility Act reduces this percentage: PPP borrowers are now eligible for loan forgiveness so long as they use at least 60 percent of loan proceeds for payroll expenses, with no more than 40 percent of loan proceeds going to eligible non-payroll expenses.

How much of my loan will be forgiven?

You will owe money when your loan is due if you use the loan for anything other than payroll costs, interest on a mortgage, rent, and utility payments during the covered loan period (which runs for 24 weeks after receiving the loan or until December 31, 2020, whichever is earlier).

You will also owe money if you do not maintain your staff and payroll.

- Number of Staff: Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- Level of Payroll: If your total eligible payroll expenses (excluding compensation in excess of $100,000 per employee per year) decreases by more than 25%, loan forgiveness will be reduced by the same amount.
- Re-Hiring: You now have until December 31, 2020, to restore your full-time employment and salary levels for any reductions made between February 15, 2020 and April 26, 2020. (Before the enactment of the Flexibility Act, workforce restoration had to occur by June 30, 2020.)

Note, though, that some reductions in workforce will not count against you for the purpose of loan forgiveness. Loan forgiveness will not be impacted if:

- you fire an employee for cause; an employee voluntarily resigns; or an employee voluntarily requests and receives a reduction in hours.
- you have laid off employees, and then:
    - made a good faith, written offer to rehire,
    - documented the employee's rejection of that offer,
    - informed the state unemployment insurance office within 30 days of the employee's rejection of the offer (employees who reject offers of reemployment may forfeit eligibility for continued unemployment compensation), and
    - documented your inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.
- Rehiring – Flexibility Act Update: In addition to the above, forgiveness will not be reduced if the employer can document in good faith that it is unable to return to the same level of business activity it was operating at before February 15, 2020, due to compliance with operating restrictions related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.
- EIDL Grant Reduction: Loan forgiveness will be reduced by the amount of an EIDL grant received by the organization, if any.

What if my nonprofit uses government funding to cover some of its payroll costs? How should I treat the portion of my payroll already covered by other government grants?

We recommend the following steps.

So long as the nonprofit itself pays the staff member's compensation (meaning that the government does not pay the staff member directly), the whole of that compensation should be included when calculating average monthly payroll costs in the first part of the PPP application.

When calculating the amount of loan forgiveness to claim, however, some of the nonprofit's payroll costs may be excluded. If the nonprofit can defer using its other government grants to cover payroll during the 8 weeks after it receives a PPP loan, it should do so. In that case, the nonprofit can claim all of its otherwise qualifying payroll costs (or that portion for which other government funding can be deferred) as part of its loan-forgiveness amount.

If the nonprofit cannot defer using its other government grants to cover payroll, then it should exclude the portion of its average monthly payroll costs that are covered by those other grants from the amount it claims for loan forgiveness.

The Federal Office of Management and Budget has issued guidance stating that "payroll costs paid with the PPP loans or any other Federal CARES Act programs must not be also charged to current Federal awards as it would result in the Federal government paying for the same expenditures twice." Additional guidance to help nonprofits navigate the interplay of PPP loans and other government funding is available on the Fiscal Management Associates website.

Which nonprofits can apply?

Nonprofits are eligible to apply for a PPP loan if:

- they are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code;
- they were in existence before March 1, 2020; and
- they employ no more than 500 full-time and part-time employees whose principal place of residence is in the United States.

Be aware that the SBA might consider two or more nonprofits under common control to be "affiliated." An affiliation of multiple organizations could exceed the 500-employee limit. This determination is complex and may require legal counsel.

What if my nonprofit client is a religious organization? Can it qualify?

Yes. The government considers religious organizations to be eligible for loans under the Paycheck Protection Program.

What can I use these loans for?

You should use the proceeds from these loans on:

- payroll costs, including benefits;
- interest on mortgage obligations incurred before February 15, 2020;
- rent, under lease agreements in place before February 15, 2020; and
- utilities, for which service began before February 15, 2020.

When can I apply?

Applications will be accepted through August 8, 2020, or until the federal funds for this program are exhausted, whichever is earlier. If you are interested, apply as soon as you can.

Where can I apply?

Check the website of your existing bank or lending institution to determine if it is accepting applications. Many participating lenders are only accepting applications from existing customers. Most lenders are accepting applications through their online portals. Earlier in the PPP process, some borrowers reported that national banks failed to process their applications. To increase the likelihood that your loan application will be processed, you may wish to apply with a community bank or FinTech company such as PayPal. A full list of lenders is available at www.sba.gov. Contact a lender as soon as possible to begin the application process.

What do I need to apply?

You will need to complete the Paycheck Protection Program loan application and submit the application with the supporting documentation to an approved lender. Click here for the SBA's model application (which individual lenders may modify).

What supporting documentation will I need to include with my application?

Each lender's requirements may vary. You should be prepared to provide your lender with documents that verify the number of full-time equivalent employees and pay rates, as well as eligible mortgage, lease, and utility obligations. Consider compiling the following:

- 2019 IRS quarterly payroll tax reports.
- Last 12 months of payroll reports beginning with your last payroll date, including:
    - gross wages for each employee, including the officer(s) if paid;
    - W-2 wages;
    - paid time off for each employee;
    - vacation pay for each employee;
    - family medical leave pay for each employee;
    - state and local taxes assessed on the employee's compensation for each employee;
    - documentation showing the total of all health insurance premiums paid by the nonprofit under a group health plan for all employees; and
    - documentation of the sum of all retirement plan funding paid by the nonprofit (excluding contributions from the employees).
- Borrowers who do not have this documentation should provide supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

Do I need to look for other funds first, before applying to this program?

No. The SBA waived its usual requirement that a borrower first try to obtain some or all of the loan funds from other sources.

How can I request loan forgiveness?

You will need to submit an application for forgiveness directly to the lender that provided your PPP loan. On June 16, the SBA released a revised [7-page loan forgiveness application] that incorporates changes to PPP loan forgiveness requirements made by the Flexibility Act. On the same date, the SBA also released a simplified [3-page "EZ" loan forgiveness application] for borrowers who can satisfy any of the following requirements:

- the borrower applied for a PPP loan as a self-employed individual, independent contractor or sole proprietor who had no employees at the time of the PPP loan application.
- the borrower did not reduce salary or wages for any employee by more than 25% during the covered loan period as compared to the period between January 1, 2020 and March 31, 2020, and did not reduce the number or hours of employees between January 1, 2020 and the end of the covered loan period (ignoring reductions related to employees who refused offers of rehire and whose positions could not be filled with similarly qualified workers).
- the borrower did not reduce salary or wages for any employee by more than 25% during the covered loan period as compared to the period between January 1, 2020 and March 31, 2020, and was unable to return to the same level of business activity it was operating at before February 15, 2020, due to compliance with official requirements related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

What are the general PPP loan terms:

- Interest rate will be 1%.
- No collateral will be required.
- No personal guarantees will be required.
- You do not need to apply first for credit elsewhere.

When do I have to pay the loan back?

Flexibility Act Update: You now will not have to start making payments on the loan until after you submit your forgiveness application and the SBA pays the forgiveness amount to the lender.

For PPP loans made before the enactment of the Flexibility Act, the full amount will be due within 2 years of when you received the money. If you receive your PPP loan after the enactment of the Flexibility Act, you will have 5 years to repay the loan. Existing PPP loans can be extended up to 5 years if the lender and borrower mutually agree. If you want to pay earlier, there are no penalties for pre-payment.

What do I need to certify?

As part of your application, you need to certify in good faith that:

- Current economic uncertainty makes the loan necessary to support your ongoing operations.

- The funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments.
- You have not received and will not receive another loan under this program.
- You will provide documentation that verifies the number of full-time equivalent employees on payroll and the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities during the 24 weeks after getting this loan.
- You understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 40% of the forgiven amount may be for non-payroll costs.
- All the information you provided in your application and in all supporting documents and forms is true and accurate. Knowingly making a false statement to get a loan under this program is punishable by law.
- You acknowledge that the lender will calculate the eligible loan amount using the tax documents you submitted. You affirm that the tax documents are identical to those you submitted to the IRS. And you also understand, acknowledge, and agree that the lender can share the tax information with the 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.

Can I make the certifications above if my nonprofit has a large operating reserve?

This is a business decision that depends on the facts and circumstances of your nonprofit and should be supported by careful and documented deliberation of your board members. SBA guidance issued on April 24 states that, in making the above certifications, organizations should take into account their current business activity and their ability to access other funds sufficient to support their ongoing business operations in a manner that is not significantly detrimental to their business.