

PPP Loan Amount¹
Current as of April 26, 2020

This document is for general informational purposes only and is not legal advice. Readers should consult their attorney, accountant, lender, and payroll provider to make determinations regarding their organization's loan amount and to ensure compliance with all applicable laws and regulations. Because every organization's situation is unique, it is important that readers seek appropriate advice before taking or refraining from taking any action as a result of this document.

The Paycheck Protection Program (the "PPP") is a forgivable loan program administered by the Small Business Administration and delivered through financial institutions. On April 16, 2020, the initial \$349 Billion in loans authorized by Congress was exhausted. However, Congress recapitalized the program with an additional \$310 Billion on April 23, 2020. President Donald Trump signed the bill on April 24, 2020 and funding is expected to be available April 27, 2020.²

The PPP allows eligible borrowers to apply for forgivable loans from financial institutions, at 1% interest, for a term of two years, and with principal, interest, and fee payments deferred for the first 6 months of the loan. Ultimately the entire loan can be forgiven if the borrower uses the funds for eligible expenses throughout the 8-weeks following its receipt of the loan funds.³ PPP loan applications will be accepted through June 30, 2020 or the earlier exhaustion of available funds.⁴

Each applicant for a PPP loan is required to certify that the information provided in its application and all supporting documents is true and accurate in all material respects.⁵ SBA Guidance has made clear that it is the borrower's responsibility, and not the lender's, to provide an accurate calculation of the average monthly payroll costs.⁶ This makes the calculation of the applicant's maximum loan amount very important.

In order to determine the amount of PPP funding that an organization is eligible for, it must take its "Average Monthly Payroll", multiply that by 2.5 and, if refinancing an Economic Disaster Injury Loan (the "EIDL"), add the EIDL amount less any EIDL advance.⁷ An organization's maximum PPP loan amount will be the lesser of that number and \$10,000,000.⁸ Represented as a formula, an organization's maximum loan amount is equal to the lesser of:

- ("Average Monthly Payroll" * 2.5) + (EIDL - Advance); AND
- \$10,000,000.

In order to complete this calculation however, applicants need to answer two important questions:

¹ This document was drafted by Jonathan Murphy, an attorney with Fortif Law Partners, LLC in Birmingham, Alabama.

² See SBA Notice: PPP Resumes April 27, 2020 (last visited April 26, 2020) <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-0>.

³ See Paycheck Protection Program Loans FAQs, at Question 20 (April 24, 2020).

⁴ See CARES Act Section 1102(a)(2)(36)(A)(iii).

⁵ See SBA PPP Borrower Application Form (last visited April 26, 2020) <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>.

⁶ See Paycheck Protection Program Loans FAQs, at Question 1 (April 24, 2020).

⁷ See <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>

⁸ See CARES Act Section 1102(a)(2)(36)(E).

1. What expenses qualify as payroll costs?
2. How is “average monthly payroll” calculated?

1. What expenses qualify as payroll costs?

Generally, payroll costs include:

- compensation of employees whose principal residence is the United States (including housing stipend and allowance);⁹
- employees’ tips (based on records or good faith estimates);¹⁰
- the cost of employee leave;
- the cost of allowance for separation and dismissal;
- the cost of employee healthcare coverage, insurance premiums, and retirement payments;
- the cost of state and local taxes on employee compensation; and
- for an independent contractor or sole proprietor, the net earnings from self-employment or similar compensation.¹¹

Note that the CARES Act and SBA Guidance have also made clear that there are expenses that must be excluded from “Payroll Costs”. These excluded costs include:

- compensation for any one employee that exceeds \$100,000 (noting however that this is a cap solely on cash compensation and not the financial value of other benefits);¹²
- compensation for employees whose primary residence is outside the United States;¹³
- certain employee-side federal withholding taxes;¹⁴ and
- paid leave or FMLA that an organization can already receive a tax credit for.¹⁵

2. How is “average monthly payroll” calculated?

The answer to this question can vary significantly based on the type of organization applying and when it was in business in 2019. Let’s start off by assuming that the organization was in business throughout the preceding 12 months leading up to its application. Generally, such a business would take the aggregate of the payroll costs we just discussed over the preceding 12

⁹ See CARES Act Section 1102 (a)(2)(36)(A)(viii)(II)(cc); see also Paycheck Protection Program Loans FAQs, at Questions 3, 32, and 33 (April 24, 2020); see also SBA and Department of the Treasury Interim Final Rule (April 15, 2020) https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule%202_0.pdf.

¹⁰ See SBA PPP Borrower Application Form (last visited April 26, 2020) <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>.

¹¹ See CARES Act Section 1102 (a)(2)(36)(A)(viii)(I).

¹² See CARES Act Section 1102 (a)(2)(36)(A)(viii)(II)(aa).

¹³ See Paycheck Protection Program Loans FAQs, at Questions 3, 32, and 33 (April 24, 2020); see also SBA and Department of the Treasury Interim Final Rule (April 15, 2020) https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule%202_0.pdf. (consider 26 CFR § 1.121- 1(b)(2)).

¹⁴ See CARES Act Section 1102 (a)(2)(36)(A)(viii)(II)(bb).

¹⁵ See Paycheck Protection Program Loans FAQs, at Question 8 (April 24, 2020).

months, or of the 2019 calendar year,¹⁶ and divide it by 12 to arrive at their “average monthly payroll.”¹⁷

This calculation gets a bit more complicated for self-employed applicants, partners, and organizations that were not in business for the 12 months preceding their application.

- If an individual is self-employed with no employees, he or she will calculate “average monthly payroll” by using his or her 2019 net profit, capped at \$100,000, in lieu of the payroll costs described above.¹⁸
- If an individual is self-employed with employees, he or she will calculate his or her “average monthly payroll” by adding his or her 2019 net profit, capped at \$100,000 to the payroll costs described above.¹⁹
- If an individual is a partner in a partnership, a PPP loan application should be filed by the partnership and the self-employment income of the partners can be treated as employee compensation for purposes of calculating “average monthly payroll.”²⁰
- If the organization is seasonal, it will calculate its “average monthly payroll” using the period beginning February 15, 2019, or, at the election of the organization, March 1, 2019, and ending June 30, 2019.²¹
- If the organization was not in business from February 15, 2019- June 30, 2019, the CARES Act requires that it use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.²² SBA guidance suggests that this is optional, but it appears to be required in the CARES Act.²³

In closing, applicants should work closely with their lender, accountant, payroll provider, and attorney to ensure that they accurately calculate their average monthly payroll and their overall maximum loan amount.

¹⁶ See Paycheck Protection Program Loans FAQs, at Question 14 (April 24, 2020).

¹⁷ See CARES Act Section 1102 (a)(2)(36) (E)(i)(I); see also Paycheck Protection Program Loans FAQs, at Question 14 (April 24, 2020).

¹⁸ See CARES Act Section 1102 (a)(2)(36)(A)(viii)(I)(bb); see also SBA Interim Final Rule (April 14, 2020) <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>.

¹⁹ See *id.*

²⁰ See SBA Interim Final Rule (April 14, 2020) <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>.

²¹ See CARES Act Section 1102(a)(2)(36)(E)(i)(I)(aa)(AA).

²² See CARES Act Section 1102(a)(2)(36)(E)(i)(II).

²³ See Paycheck Protection Program Loans FAQs, at Question 14 (April 24, 2020).