

A Broadcaster's Guide to the Newly-Available SBA Loans

Sponsored by the National Alliance of State Broadcasters Associations

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Federal Response to COVID-19 Pandemic

March 6, 2020: Emergency appropriations of \$8.3 billion, mostly for small business disaster assistance loans and emergency health and medicine efforts.

March 18, 2020: Enactment of the Families First Coronavirus Response Act, which established paid leave guarantees for certain workers.

March 27, 2020: Enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which includes \$2 trillion in federal funding for states, businesses, and individuals. The CARES Act provides for small business loans and tax benefits, among other measures.

Next: A fourth relief measure targeting the economic effects of the COVID-19 emergency.

SBA Loan Programs: At-a-Glance

	Paycheck Protection Loan Program	Economic Injury Disaster Loan Program
Application	<ul style="list-style-type: none"> Applicants apply directly to designated lenders. 	<ul style="list-style-type: none"> Applicants apply through the SBA.
Loan Amount	<ul style="list-style-type: none"> Up to \$10M (or 2.5x the average monthly payroll for the year preceding the loan) 	<ul style="list-style-type: none"> Up to \$2M (amount derived based on applicant need)
Eligibility	<ul style="list-style-type: none"> Broadcasters with up to 500 employees (including "affiliates") 	<ul style="list-style-type: none"> Broadcasters with up to 500 employees (including "affiliates")
Uses	<ul style="list-style-type: none"> Payroll, employee benefits, mortgage interest payments, rent, and utilities 	<ul style="list-style-type: none"> Funds to help the business survive until normal operations resume (includes costs covered by the PPP plus more)
Forgiveness	<ul style="list-style-type: none"> Forgiveness for loan proceeds used for permitted costs in the 8 weeks after the loan is issued Subject to limitations on workforce or employee compensation reductions Only 25% of the amount forgiven may be for non-payroll costs. 	<ul style="list-style-type: none"> No forgiveness on loan principal
Terms	<ul style="list-style-type: none"> Remaining balance after forgiveness: maximum maturity of 10 years at max interest rate of 4% (SBA using 2y at 1%) No personal loan guaranty requirement 	<ul style="list-style-type: none"> Maximum interest rate of 3.75% Maximum loan term of 30 years No personal loan guaranty requirement for loans up to \$200,000

CARES Act: Paycheck Protection Loan Program

Paycheck Protection Program

PURPOSE	<ul style="list-style-type: none">• The Paycheck Protection Program is a loan program designed to provide a direct incentive for small businesses to keep their workers on the payroll.
PROGRAM OVERVIEW	<ul style="list-style-type: none">• Each eligible small business may receive a loan of up to 2.5x its average monthly payroll for the year preceding the loan, but not more than \$10M.• The program extends until June 30, 2020. Loans are available until the appropriated funds run out, which is likely going to be sooner than June 30th.
ADMINISTRATION	<ul style="list-style-type: none">• The program is administered by the Small Business Administration (SBA) but loans are provided by designated lenders.• Applicants apply directly to designated lenders.

Paycheck Protection Program

ELIGIBILITY	Company Size	<ul style="list-style-type: none">• Broadcasting companies with up to 500 employees are eligible.• An “employee” includes individuals working on a full-time, part-time, or other basis.
	Affiliates Rule	<ul style="list-style-type: none">• The size threshold applies to the applicant entity as well as its “affiliates.”• Entities are “affiliated” when one controls (or has the power to control) the other OR a third party controls (or has the power to control) both.• “Control” may be established through: ownership; stock options, convertible securities, agreements to merge; common management; or identity of interest.
	Other SBA Requirements	<ul style="list-style-type: none">• Place of business in the U.S.• Operate primarily within the U.S.

Paycheck Protection Program

LOAN AMOUNT	The available loan amount is the <i>lesser</i> of: (1) \$10M, or (2) 2.5x the average monthly payroll for the year preceding the loan (salaries capped at \$100K)
ALLOWABLE USES	<ul style="list-style-type: none">Loans may be used to cover certain costs of payroll, employee benefits, mortgage interest payments (on debt incurred prior to 2.15.20), rent (on property leased prior to 2.15.20), and utilities (on service that began prior to 2.15.20).
LOAN TERMS	<ul style="list-style-type: none">Complete payment deferment (including payment of principal, interest, and fees) for six to twelve months.Any remaining balance after loan forgiveness will have a maximum maturity of 2 years at a maximum interest rate of 1%.No personal loan guaranty requirement.

Paycheck Protection Program

LOAN FORGIVENESS	Forgivable Costs	<ul style="list-style-type: none">• Loan forgiveness is available for loan proceeds used for permitted costs in the eight weeks after the loan is issued.
	Limitations	<ul style="list-style-type: none">• Only 25% of the amount forgiven may be for non-payroll costs.
	Reductions	<ul style="list-style-type: none">• Amount of loan forgiveness will be reduced proportionally by any reduction in employees (as compared to the prior year) and by reduction in employee pay (beyond 25% of the prior year's compensation).• Borrowers who re-hire employees previously laid off due to the COVID-19 crisis will not be penalized for having reduced payroll at the beginning of the period.

Paycheck Protection Program: How to Apply

Paycheck Protection Program Borrower Application Form		OMB Control No.: 3245-0047 Expiration Date: 09/30/2020	
Check One: <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other		DBA or Tradename if Applicable 	
Business Legal Name			
Business Address		Business TIN (EIN, SSN)	Business Phone
			() -
		Primary Contact	Email Address
Average Monthly Payroll:	\$	x 2.5 + EIDL Net of Advance (if Applicable) Equals Loan Request:	\$
Number of Employees:			
Purpose of the loan (select more than one): <input type="checkbox"/> Payroll <input type="checkbox"/> Lease / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain):			

Applicant Ownership

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

If questions (1) or (2) below are answered "Yes," the loan will not be approved

Question	Yes	No
1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

If questions (5) or (6) are answered "Yes," the loan will not be approved.

Question		Yes	No
5.	Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? <u>Initial here to confirm your response to question 5 →</u>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)? <u>Initial here to confirm your response to question 6 →</u>	<input type="checkbox"/>	<input type="checkbox"/>
7.	Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?	<input type="checkbox"/>	<input type="checkbox"/>
8.	Is the Applicant a franchise that is listed in the SBA's Franchise Directory?	<input type="checkbox"/>	<input type="checkbox"/>



Paycheck Protection Program Borrower Application Form

By Signing Below, You Make the Following Representations, Authorizations, and Certifications

CERTIFICATIONS AND AUTHORIZATIONS

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by initialing next to each one:

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 Form(s) 1099-MISC.

Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments as specified under the Paycheck Protection Program Rule. 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.


The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's 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.

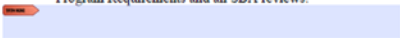

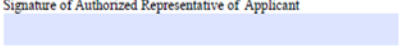

I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.

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 the Paycheck Protection Program.

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 18 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.

I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided 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.



	
Signature of Authorized Representative of Applicant	Date
	
Print Name	Title

Sample Application Available at:

www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp

pillsbury

Threshold Eligibility Questions

- In operation on February 15, 2020.
- Eligible as a “Small Business Concern.”
 - The business can rely *either* on a 500-employee size standard *or* on its size standard under its primary industry code (its “NAICS” code) – in the Broadcasting industry, most of the codes are revenue-based and in the \$30-40 million average annual receipts range.
 - For some businesses, it will require significant legwork to determine their size because they must include the employees or revenue of “affiliates” – *i.e.*, other businesses that the applicant controls or that control applicant. Affiliates include businesses that are under common control with applicant. More on this below.
- Able to certify that the loan is necessary to support ongoing operations and will be used to retain workers, maintain payroll or other allowable uses of the loan.

Mechanics of the Application

- “Average Monthly Payroll” includes the sum of: (1) salaries (but see below) or other cash compensation including tips; (2) payment for vacation, parental, family, medical or sick leave; (3) allowance for dismissal or separation; (4) payments for group health benefits; (5) payments for retirement benefits; and payments for State or local tax assessed on employee compensation.
- It does not include: (1) salaries in excess of \$100,000; (2) federal taxes imposed or withheld; (3) compensation for employees living outside the U.S.; (4) sick leave or family leave entitled to a credit under the Families First Coronavirus Response Act. Also, as SBA clarified, do not count independent contractors.
- Adjust salaries above \$100,000, add benefits and other costs above, take the average over the 12 months preceding the application, then multiply by 2.5.

Mechanics of the Application

- “Number of Employees” may be a tricky calculation.
 - Again, do not count independent contractors.
 - But do count employees of affiliates (more on this below).
 - In addition, the number of employees of an applicant *should* include both U.S. and international employees, however, SBA has created significant confusion over this issue in the last few days by stating the following in its Interim Final Rule:
 - “You are eligible for a PPP loan if you have 500 or fewer employees whose principal place of residence is in the United States.”
 - We believe this sentence is simply a mistake and will be corrected at some point soon.

Calculating Number of Employees – Affiliation

- SBA's interim rules and guidance expressly state that several (potentially complicated) affiliation rules remain in effect for the PPP, including affiliation as a result of:
 - Ownership – 51% control of voting stock
 - “Negative Controls” by a minority shareholder
 - Stock Options, Convertible Securities and Merger Agreements
 - Common Management
 - “Identity of Interest” between close relatives

Question No. 3 – The Tough One

- Question No. 3 of SBA's Application Form (SBA Form 2483) represents SBA's attempt to obtain information on affiliates but confuses the issue by asking applicants to list any "owners." The form also appears to define owner as "20% owner."
- Applicants should identify all affiliates in Addendum A, regardless of confusion concerning the 20% threshold.

Certifications

- Applicants are required to make important certifications.
 - Certification of eligibility
 - Certification related to size of business (including affiliates)
 - Certification related to using the loan for the allowable business purposes
 - Certification that applicant will not use more than 25% of the forgiven amount for non-payroll costs
 - And certification that:
 - “Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

An Ounce of Prevention

- Application specifies the following dire penalties for misrepresentations in connection with the loan application: “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.
- False Claims Act liability also likely.
- SBA is anticipating significant fraud in the PPP and already has appointed a new Inspector General to supervise the program.

Unresolved Questions about the PPP

- Size Calculation

- As discussed above, SBA's interim rule has created the (we think) false impression that non-U.S. employees can be excluded for the purposes of the employee count. This would lead to some very odd results. We anticipate clarification.

- Loan Forgiveness

- The SBA has begun to give some guidance — such as stating that an applicant must use 75% of the loan for payroll in order to obtain full forgiveness — but SBA has yet to issue regulations. Congress gave SBA 30 days from the Act to do so.
- The CARES Act states that loan forgiveness will be reduced in proportion to a borrower's reduction in employee head count compared to 2019 or the first months of 2020. The Act also states that forgiveness will be reduced based on salary reductions of more than 25%. One measure appears to be specific to named individual employees, the other does not. This must be clarified.

Unresolved Questions about the PPP

- The “Re-hiring” Provisions of the Forgiveness Section
 - The Act states that loan forgiveness will *not* be reduced proportionally where the number of employees or wages was reduced during the period February 15-April 26, 2020 but the number of employees and/or wages was restored by June 30, 2020. It seems that Congress was trying to get employers to re-hire by April 26, with a safe harbor until June 30, but that is not how the Act reads.
- Duplicative Uses of Loan Money
 - A provision called “Duplication” states, cryptically: “Nothing . . . Shall prohibit a recipient of a [disaster loan] during the period beginning on Jan. 31, 2020 and ending on the date on which covered loans are made available that is for a purpose other than paying payroll costs and other obligations described [as allowable costs under the PPP].”
 - It is clear that an applicant can obtain an EIDL and then obtain a PPP. But how will SBA apply this duplication test? Regulations are required.

CARES Act: Economic Injury Disaster Loan Program

Economic Injury Disaster Loans

PURPOSE	<ul style="list-style-type: none">• The long-standing Economic Injury Disaster Loan Program was created to assist businesses, renters, and homeowners located in regions affected by declared disasters.
PROGRAM OVERVIEW	<ul style="list-style-type: none">• The CARES Act expands the existing Disaster Loan Program.• Under the program, eligible businesses may receive a loan up to \$2M.• Loans provided under the expanded Disaster Loan Program are available until Dec. 31, 2020.
ADMINISTRATION	<ul style="list-style-type: none">• Applicants apply directly to the SBA.• Borrowers may obtain both a Paycheck Protection Loan and a Disaster Loan, but may not obtain loans for the same expenses/costs.

Economic Injury Disaster Loans

ELIGIBILITY	Company Size	<ul style="list-style-type: none">• Companies with up to 500 employees are eligible.• Individuals operating under a sole proprietorship, with or without employees, or as an independent contractor, may also apply.
	Affiliates Rule	<ul style="list-style-type: none">• The size threshold applies to the applicant entity as well as its “affiliates” – <i>i.e.</i>, firms under common ownership or control.
	Other SBA Requirements	<ul style="list-style-type: none">• Place of business in the U.S.• Operate primarily within the U.S.

Economic Injury Disaster Loans

LOAN AMOUNT	<ul style="list-style-type: none">• Up to \$2M.• Exact amount is determined based on the applicant's need.
ALLOWABLE USES	<ul style="list-style-type: none">• Funds to help the business survive until normal operations resume (includes costs covered by the PPP plus more)
LOAN TERMS	<ul style="list-style-type: none">• Interest rate is 3.75% for small businesses.• Loan term of up to 30 years.• Personal guaranty is not required on loans up to \$200,000.• No collateral required for loans of \$25,000 or less; for loans of more than \$35,000, general security interest in business assets will be used.• Borrowers do not have to prove that they cannot get credit elsewhere.• Borrowers must allow the SBA to review tax records.

Economic Injury Disaster Loans: Emergency Advance

AVAILABILITY	<ul style="list-style-type: none">• \$10,000 emergency advance is available while the application is pending.• Under the CARES Act, the emergency advance is supposed to be delivered within three days of the application being submitted. But, reports indicate that applicants have not been receiving this money as quickly as promised.
TERMS	<ul style="list-style-type: none">• The emergency advance is not required to be repaid.• Applicants may receive this advance while applying for a Paycheck Protection Loan. If received, the advance will be deducted from the loan forgiveness amount under that program.

Disaster Loan Program: How to Apply



DISCLOSURES



BUSINESS INFORMATION



BUSINESS OWNERS INFORMATION



ADDITIONAL INFORMATION



SUMMARY

Apply Online at: <https://covid19relief.sba.gov/#/>

Select Tax Considerations

Tax Benefits **Unavailable** to Paycheck Protection Loan Recipients

Borrowers who have a loan forgiven under the Paycheck Protection Program are ineligible for two employer tax benefits:

- (1) Delay in Employer Payroll Tax Payments
- (2) Employee Retention Tax Credit

Delay of Employer Payroll Taxes

- Employers generally are responsible for paying a 6.2% Social Security tax on employee wages, but the CARES Act allows employers to defer payment of the employer share of the Social Security tax for payrolls made between March 27, 2020 and Jan. 1, 2021.
- The Act then permits the employer to pay that deferred tax amount over the next two-years, with half required to be paid by December 31, 2021 and the other half required to be paid by December 31, 2022.
- **Note that an employer who receives a (forgiven) Paycheck Protection Loan MAY NOT take advantage of this ability to delay payment of its employer payroll taxes.**

Employee Retention Tax Credit

- The CARES Act provides a refundable payroll tax credit for 50 percent of “qualified wages” (up to \$10,000 per employee) paid by employers to employees between March 13, 2020 and December 31, 2020.
- Any employer may take advantage of the Employee Retention Tax Credit if during a calendar quarter:
 - (1) business operations are fully or partially suspended during the calendar quarter due to orders from a governmental authority limiting commerce, travel, or group meetings due to COVID-19; or
 - (2) the business experiences a significant decline in gross receipts (50% less than the previous year).

Employee Retention Tax Credit (cont'd)

- For employers with more than 100 employees, “qualified wages” are those paid to an employee *who is not providing services* due to (1) a full or partial suspension of businesses, or (b) a significant decline in gross receipts.
- For employers with 100 or fewer full-time employees, all employee wages are eligible for the tax credit, regardless of whether an employee is furloughed.
- **Note that an employer who receives a (forgiven) Paycheck Protection Loan MAY NOT take advantage of the Employee Payroll Tax Credit.**

Meet Our Presenters



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