

Note: The Paycheck Protection Flexibility Act was signed into law on June 5, 2020, updates are noted below **bolded**. Further changes are likely as agencies issue updated guidance under this new law.

What is the Paycheck Protection Program?

The CARES Act created the Paycheck Protection Program, a Small Business Administration loan intended to help businesses retain employees during the COVID-19 shutdown. The loan will be made to cover payroll (including certain employee benefits), rent, mortgage interest and utility costs for up to 8 weeks of business operations **[Businesses may now use up to 24 weeks, however existing borrowers may opt to retain the eight week period]**. These loans will be made through existing SBA banking relationships. The loans can be forgiven to the extent they are used for covered expenses.

Loan proceeds not used for covered expenses must be repaid over two years **[Now five years for PPP loans originating on or after June 5, 2020; it's not clear if existing loans will be extended]** at a one percent interest rate. Loan payments are deferred for six months **[Now the deferral period ends when the forgiveness amount is remitted to the lender]**. More information is available here:

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

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

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

Are Retirement Plan Contributions covered by the PPP?

Yes, but the wording in the law is vague. Section 1102 of the CARES Act says payroll costs include "payment of any retirement benefit." On April 6, the Treasury Department posted Frequently Asked Questions (see link above). Q&A #7 discusses retirement benefits, mentioning both defined benefit and defined contribution plans. The SBA does not further explain what retirement benefits are included.

The Q&A mentions retirement plans in the context of whether or not the contributions are included in the \$100,000 per person cap (see below), so while not directly answering the question, this Q&A certainly implies that these contributions are includible expenses that can be covered by the PPP. This should mean that the PPP covers employer matching, safe harbor, profit sharing, defined benefit and cash balance plan contributions during the 8-week coverage period.

Must covered Retirement Plan Contributions actually be deposited during the PPP-covered period?

We believe so. [According to the Treasury Department Fact Sheet](#), the loan amounts will be forgiven if:

- The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the covered period after the loan is made; and
- Employee and compensation levels are maintained.
- The forgiveness application refers to costs “incurred or paid during the Covered Period.”

So even though contributions are made to many plans on an annual basis, for now it is probably safest to assume that plan contributions actually paid during the PPP-covered period can be included in the forgivable amount of the loan.

Are Covered Retirement Plan Contributions limited to a pro-rated 8 week amount?

Again, we don't know. Currently there is no specific guidance on how plan contribution costs are computed for the loan forgiveness amount. It is reasonable to expect that the covered amount may be limited. The best course of action may be to deposit the amount you need to optimize your forgiveness amount; but be prepared to have the plan contribution amount limited to 8/52 of your annual amount. **[This may now be up to 24 weeks, but it is still not clear exactly how SBA will apply this].**

Is the forgiven PPP amount taxable?

No, it is not directly taxable. However in [IRS Notice 2020-32](#) the IRS states that expenses paid from the forgiven PPP loan will not be tax deductible. Contact your CPA to discuss how this may affect your situation. **[The Flexibility Act did not address this, but Congressional leaders have said it is their intent to allow the deduction of expenses paid with a PPP loan in additional legislation].**

Does PPP cover payroll and contributions for the business owner?

Yes, although in determining covered payroll, salary costs over \$100,000 per individual are excluded. Benefit costs, however, are added over and above this \$100,000 cap according to the Treasury Department's [Interim Final Rule](#) issued April 2, 2020 and the FAQ Q&A #7 referenced above. However, the SBA Loan Forgiveness Application (SBA Form 3508) does include health and retirement benefits in the \$100,000 cap for certain self-employed individuals (generally those who file Form 1040 Schedule C and partners in partnerships filing Form 1065). **[The post-Flexibility Act SBA Form 3508 limits total eligible payroll costs to \$20,833 for each such owner. It is not clear if this limit will apply to corporate shareholders as well. The form uses the term “owner-employee” AND “self-employed individual/partner,” even though in Code Section 401(c)(3) these have the same meaning. We don't know if the SBA is using the tax code definition. There may be further clarification of this, but the final resolution is not known at this writing.]**

What documentation of plan contributions do I need to apply for the loan?

You will need to work with your lender to fulfill their requirements. There will be documentation needed now to apply for the loan, and documentation of actual covered costs later to apply for forgiveness of the loan. You can download the SBA application form [here](#).

The rules state that employer may use the 2019 year, or the trailing 12 months. We recommend using your 2019 retirement plan contributions for purposes of the estimate since these numbers should be readily available, and this is what the application form describes, as follows:

For purposes of calculating "Average Monthly Payroll," most Applicants will use the average monthly payroll for 2019, excluding costs over \$100,000 on an annualized basis for each employee. For seasonal businesses, the Applicant may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019, excluding costs over \$100,000 on an annualized basis for each employee. For new businesses, average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020, excluding costs over \$100,000 on an annualized basis for each employee.

If you have not submitted your 2019 employee data to us yet, please do so as soon as possible so that we can prepare the 2019 contribution calculations for you.