



The Rand Guide to the SBA Paycheck Protection Program

by Joe Rand

An Overview of the Paycheck Protection Program

Disclaimer: I am a lawyer, but I am not your lawyer. And I'm definitely not an accountant, so be careful of my math. Basically, this analysis is just one man's opinion of the Paycheck Protection Program. You should discuss this matter with your accountant, lawyer, and/or banker to determine if you are eligible.

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The Coronavirus Aid, Relief, and Economic Security Act, or “CARES Act” includes a range of measures designed to address the medical and economic concerns generated by the coronavirus, including the expansion of unemployment insurance to cover self-employed individuals and independent contractors.

One of those measures is called the Paycheck Protection Program (“PPP”), which is a loan from the Small Business Association (“SBA”) that is available to certain types of small businesses to cover payroll and other normal business expenses. Most importantly, the PPP provides for a forgivable loan – meaning that you do not need to pay the SBA back if you maintain close to your pre-crisis payroll levels.

The basic idea is this: the SBA will give loans to small businesses for about 2.5 times (10 weeks or so) of their average monthly payroll to cover about eight weeks of normal expenses (payroll, benefits, rent, utilities, etc.). The goal is to help that business retain all or most of its employees at close to their current salary levels, rather than laying them off and putting them into the unemployment system.

And the SBA is incentivizing businesses to retain those employees by making those loans forgivable if the business maintains about 75% of its pre-crisis payroll levels. Essentially, it’s free money from the government to pay your employees and even cover some other business expenses.

In this memo, I'm going to review the fundamentals of the PPP. Specifically, I'm going to address the following questions:

1. Are you eligible? Probably yes, because the loan is widely available for businesses with 500 employees or fewer, sole proprietors, independent contractor, and the self-employed.
2. What are the loan terms? You can get 2.5 times your average monthly payroll, including most employee-based expenses.
3. What can the loan proceeds be used for? You can use the loan proceeds to cover eight weeks of payroll, benefits, rent, utilities, and some other covered expenses.
4. How do you get the loan forgiven? You can get the loan forgiven so long as you retain most of your current employees at close to their current salaries.
5. How do you apply for the PPP loan? The process has not been set up as of the writing of this version, but you'll probably go to a local bank authorized to do SBA loans. You'll need to certify that the coronavirus has affected your business.

Now, we'll go through those questions in more detail.



01. Are you eligible?

The law takes an expansive approach to eligibility, including not just multi-employee businesses with 500 employees or fewer, but sole proprietors, independent contractors, and self-employed individuals. And the law does not provide any substantive exclusions to the eligibility rules for particular types of industries.

Indeed, the legislation dedicates an entire subsection titled “[Inclusion of Sole Proprietors,](#)

[Independent Contractors, and Eligible Self-Employed Individuals](#)” to state that “individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.”

Here is a clip of the actual text of the legislation:

“(ii) INCLUSION OF SOLE PROPRIETORS, INDEPENDENT CONTRACTORS, AND ELIGIBLE SELF-EMPLOYED INDIVIDUALS.—

“(I) IN GENERAL.—During the covered period, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.

Now, just to be clear – we are only talking about eligibility. The question of what kind of loan a sole proprietor, independent contractor, or self-employed individual could get is a little more complicated.

We will discuss that below.

I should be clear that one type of individual is definitely not eligible: an employee of someone else’s business. This loan is only for business owners of all sizes.

02. What are the Loan Terms?

Now that we've established eligibility, the next question is how the loan works. So let's review the terms of the loan

The loan calculation is pretty straightforward: you can get a loan for up to 2.5 times your average monthly payroll over the prior rolling year, up to a maximum of \$10 million. The definition of "payroll" gets a little complicated, as I will explain, but the basic idea is pretty simple: you can get a loan amounting to about 10 weeks of your payroll expenses.

The law is very specific and detailed in defining "payroll" to include, for our purposes, payments for:

- salary, wage, commission, or similar compensation
- vacation, parental, family, medical, or sick leave
- group health care benefits
- state or local taxes on employee compensation.

Section 1102(a)(1)(A)(viii)(I)(aa). So it's a pretty broad calculation.

The only real limitation for most businesses is a \$100,000 yearly cap on compensation paid to individual employees. To use a simplified example, let's say you have three people on payroll, and they make \$50,000, \$75,000, and \$175,000, then your yearly payroll is \$300,000. In that case, your monthly payroll would be \$25,000 (\$300,000 divided by 12), and the loan amount would be \$62,500 (\$25,000 times 2.5).

But for purposes of the payroll calculation, you don't count any compensation above \$100,000, so in this case you'd count that third employee as only making \$100,000 per year. Now, your three employees make \$50,000, \$75,000, and (essentially) \$100,000. That makes your yearly payroll \$225,000, your average monthly payroll \$18,750, and your loan amount \$46,875. You still count that high-paying employee; you just don't count her entire salary.

DOES "PAYROLL INCLUDE YOUR OWN SALARY?"

The next question is whether a business owner who is employed by her own business could include her own salary in the "payroll" calculation. My opinion is that she can, for a couple of reasons.

First, the law does not specifically exclude compensation paid to business owners. Again, the definition of "payroll" is pretty broad, including compensation paid to all employees. If the business owner is an employee who gets paid a salary, that salary should be covered.

This is, by the way, consistent with the way the SBA covers other loans – **a reasonable owner salary can be paid by SBA loan proceeds.**

Second, and more importantly, the PPP law itself allows that income earned by some types of owners are part of the “payroll” cost for that business. Section 1102(a)(1)(A)(viii)(l)(bb) specifically defines “payroll costs” to include:

the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period;

That is, if the PPP program allows someone who runs her own sole proprietorship to include her salary in her “payroll,” then someone who owns a larger business and

pays himself a salary as an employee of that business should also be able to include his salary in the calculation.

Accordingly, I believe that an owner who is an employee of her business, and pays herself a salary, can include that salary (up to \$100,000 per year prorated) in the payroll calculation.

To give you an idea of how generous the PPP loan is at different income levels, here’s a table showing you the loan amounts at \$10,000 increments of yearly income, up to the \$100,000 cap:

Yearly Personal Income	Monthly	2.5 Month Loan
\$ 100,000	\$ 8,333	\$ 20,833
\$ 90,000	\$ 7,500	\$ 18,750
\$ 80,000	\$ 6,667	\$ 16,667
\$ 70,000	\$ 5,833	\$ 14,583
\$ 60,000	\$ 5,000	\$ 12,500
\$ 50,000	\$ 4,167	\$ 10,417
\$ 40,000	\$ 3,333	\$ 8,333
\$ 30,000	\$ 2,500	\$ 6,250
\$ 20,000	\$ 1,667	\$ 4,167
\$ 10,000	\$ 833	\$ 2,083

Remember, though, that your “payroll” calculation also includes wages, salaries, and commissions paid to any of your employees. So if you have an assistant, her salary goes into your payroll. And if you have salespeople who are employees, their salaries and even their commissions go into your payroll. But you can’t include commissions paid to salespeople who are independent contractors. Why? Because as independent contractors, they’re entitled to file for a PPP loan themselves!

Also, don’t forget that the same \$100,000 cap applies to salaries and commissions paid to your employees. If you have an employee who makes more than \$100,000 a year, you don’t get to count the payroll cost above the cap. So, for example, let’s say you run a small company with the following employees:

- You personally take home \$400,000 per year.
- An employee salesperson who makes a salary and commissions of \$120,000 per year.
- An administrative assistant employee who makes \$50,000 per year.

(For simplicity, we are assuming your only expenses are employee salary and commissions).

In that case, both you and the employee salesperson would be capped at \$100,000 income per year. So when you apply for a loan, your payroll for purposes of computing the loan amount will look like this:

- You: \$100,000 per year, or \$8,333 per month.
- Employee in sales: \$100,000 per year, or \$8,333 per month.
- Employee Assistant: \$50,000 per year, or \$4,167 per month.
- Total: \$20,832 per month.
- Total loan amount: \$52,081 (2.5 times monthly payroll).

If the salesperson is an independent contractor, though, none of her income is counted toward your “payroll” in calculating your loan amount.



03. What can you use the loan proceeds for?

The PPP loan is set up to cover eight weeks of business expenses, up to and including June 30, 2020. During that time, you can use the loan to pay your payroll, benefits, rent (or mortgage interest if you own your work location), utilities, and interest on any business loans you've already taken.

One of the interesting aspects of the PPP loan is that the loan *amount* is based solely on your payroll costs, but the loan proceeds can be used to cover some other business expenses. So don't get confused about that. You compute your loan amount using just your payroll costs, but once you get your loan, you can spend it not just on payroll but other expenses.

And remember that the loan covers an eight-week period, but your loan amount was calculated at 2.5 times your average monthly payroll – which is 10 weeks. So you have two extra weeks of payroll to spend in that eight week loan period, which is obviously designed to cover some of your other expenses.

Also, you don't actually have to retain 100% of your current payroll expense. As we discuss below, you need to maintain most of your current employees, and pay them at least 75% of the salary they received when you calculated your loan amount. If you don't, part of your loan might not be forgiven. But you can reduce their salary a little bit, which gives you some room to pay your other expenses with the loan proceeds.



04. How do you get the loan forgiven?

Here's the best part of the PPP program: the loan amounts are forgivable if you spend them on payroll, benefits, rent, or utilities, prior loan interest, and if you maintain most of your workforce and their salaries. Even better, the loan forgiveness is not taxable!

Let's go over the [Section 1106\(b\)](#) requirements in a little more detail. The forgiveness calculation is really complicated, so I'm not going to go into it here, but the basic idea is that you have to spend the loan on allowable expenses and retain most of your employees (including yourself) at their pre-crisis salaries:

First, the SBA will forgive your loan proceeds that are spent on allowable expenses. That consists of the payroll costs (as defined broadly in the legislation, including benefits and state taxes), your rent (or your mortgage interest if you own your location), utilities, and interest on prior loans. If you spend any of the proceeds on anything else that's not covered, the SBA will not forgive that part of the loan.

Second, you must retain most of your workforce at close to their normal pay. The calculations are a little complicated here, but the basic idea is that the SBA wants you to retain most of your employees, and pay them at least 75% of what you were paying them before the crisis – in other words, the amount you were paying them when you calculated your loan amount.

You can't base the loan amount on 100% of salary, then fire everyone or drop their salary by 50%, and pocket the loan proceeds. The whole point of the PPP program is to keep everyone employed. Note that this only applies to people who were making under \$100,000. If you have an employee making \$200,000, and you reduce them to \$100,000, that won't count against your debt forgiveness. What if you already fired everyone? That's okay, so long as you hire them back for at least 75% of their original pay before June 30, 2020.

Third, you have to spend 75% of the loan on payroll expenses. The SBA issued guidance that reinforces the idea that the purpose of the PPP loan is to keep people employed. Not only must you maintain a payroll that is at least 75% of your pre-crisis payroll, but you have to spend 75% of the loan on payroll costs, and only 25% maximum on rent and other expenses.

How do you get forgiveness? You just have to file some documents with your lender at the end of the eight-week period to substantiate that you retained your employees, spent the proceeds on allowable expenses, and spent at least 75% of the loan on payroll.

05. How do you apply for a PPP loan?

You apply for a PPP loan through a local bank, which provides the loan under the auspices of the SBA and the program. The banks actually make the loans, then get repaid with some fees and interest by the SBA.

So what do you need? The SBA has published two different types of applications for the PPP loan. The first is an [online application form](#) that was released March 30, but seems to be more of a place-holder, a way to track interest and gather basic information. The second is a very simple PDF application form that was identified as a “[sample form](#)”, and was released by the Treasury Department as part of its [guidance for the PPP program](#) on April 1.

In that guidance, the Treasury Department set out a schedule for applying for the PPP loans, instructing small businesses and sole proprietorships to apply starting **April 3**, and independent contractors and self-employed individuals to apply starting **April 10**.

It's still not clear, though, how much documentation lenders will require. It might depend on the individual lender, so you should check with your banker.

When you do apply, though, you have to meet some basic requirements established by the PPP legislation. Specifically, you'll need to make a “good faith certification”:

(I) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;

(II) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

(III) that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and

(IV) during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

That's a fairly loose standard, since you only really need to state that the “uncertainty” in the economy necessitates the loan.

I will update this memo as the SBA gives the necessary guidance.

Conclusion

I should make clear again that this is just one man's opinion. I am a lawyer, but not your lawyer, and you should confirm these details when you talk with your bank about how to go about getting a loan.

Please let me know if you have any questions, or comments, or, especially, corrections.

Stay safe, and stay healthy. And go wash your hands.

J.R.

About the Author

Joe Rand is the Chief Creative Officer for Better Homes and Gardens Real Estate – Rand Realty, one of the largest companies in the New York tristate region with almost 30 offices and over 1,200 agents, and closing over 6,000 transactions worth over \$2.5 billion in volume in 2019. He is also the Managing Partner for the Hudson United family of companies, providing mortgage and insurance services.



As a former law professor, Joe brings an academic perspective to his company's career development programs and its licensing school, the Rand Academy. He has pioneered the concept of "Client-Oriented Real Estate," or "CORE," an educational philosophy designed to raise the level of client service provided by the industry by teaching agents how to be "great at their jobs." An industry thought leader, has spoken at numerous industry conferences, including Real Estate Connect, the RIS Media CEO Summit, REALTOR Triple Play, and the Women's Council of REALTORS national meetings. In 2018, Rand was honored by RIS Media with one of the inaugural industry Newsmaker Awards, and recognized by Inman News as one of the Top 100 Real Estate Influencers, and in 2019 was recognized in the Real Estate Almanac from T360 Advisors in the Swanepoel Power 200 as one of the most powerful people in real estate.

He is the author of [Disruptors, Discounters, and Doubters](#), about how the industry can overcome the challenges posed by disruption by raising the bar on client experiences, and [How to be a Great Real Estate Agent](#), about how agents can build their business by becoming better at identifying and servicing client needs. He is also a [regular contributor to Inman News](#), and the author of several online blogs: the [Client-Oriented Real Estate Blog](#), where he writes about the CORE concept and real estate education; the [Rand Country Blog](#), providing real estate analysis for the New York City tri-stage market; and the [Move to SUMA](#), about his personal experiences relocating from Manhattan to the suburbs.

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