

# **FAQ:** **Small Business Administration's Paycheck Protection Program (PPP)**



The Paycheck Protection Program, known as the PPP, is one of the major initiatives included in the Coronavirus Aid, Recovery and Economic Security “CARES” Act to help small businesses keep going through the economic downturn associated with the COVID-19 public health crisis. Many businesses already obtained loans through this program. The Small Business Administration (SBA) continues to issue guidance as new questions arise regarding eligibility for loans and conditions of loan forgiveness.

This advisory is intended to provide general information to address some of the most frequently asked questions about the PPP, including what type of employer health plan expenses may qualify under the program. This article reflects the most recent guidance as of May 8, 2020 and doesn’t address a particular situation. Since the SBA will continue to issue guidance, borrowers should confirm that they are looking at the most recent information to guide their business decisions.



## Employee benefit expenses

### **Do employee pre-tax salary reduction contributions for benefits qualify as a payroll cost for PPP loan forgiveness?**

Yes. According to [SBA rules](#), pre-tax employee contributions for health insurance or other fringe benefits, such as pre-tax salary reduction contributions to a health flexible spending account, for accident or disability coverage, group health plan coverage or transportation fringe benefits, are payroll costs that qualify for loan forgiveness.

*Note that after-tax contributions by employees, for example those for health or disability insurance, are part of wages and, therefore, considered payroll costs.*

### **Do employer contributions for group health plan coverage for employees qualify as payroll costs for PPP loan forgiveness?**

Yes. The amount an employer pays for group health plan coverage for employees, such as a portion of group health plan premiums, is a payroll cost for PPP loan purposes. There is no specific definition of group health plan for this purpose. Thus, qualifying group health plans are not limited to plans that provide minimum essential coverage. Other types of group health plans, such as those covering dental and vision only, and other health excepted benefits, such as hospital indemnity, other fixed indemnity coverage and critical illness or other specific disease coverage may also qualify.

## **I'm a 1099 self-employed contractor. Do my own health insurance premiums qualify as a payroll cost under the PPP?**

Unfortunately, no. SBA rules provide that for 1099 contractors and sole proprietors, payroll costs are determined by the individual's net profit as reported on Form 1040 Schedule C for 2019, up to a maximum of \$100,000. Health insurance expenses of these self-employed individuals, their spouse and dependents aren't reported on Schedule C. They are a separate above-the-line deduction and are not considered a qualifying expense for PPP purposes.

However, if a 1099 contractor has employees, the cost of health insurance expenses for those employees, as reported on line 14 of Schedule C, counts as a payroll cost. The SBA intends to issue additional guidance for self-employed persons who were not in business in 2019, but who were in operation on February 15, 2020 and will file a schedule C for 2020.

## **If an employer was not funding group health insurance premiums in 2019 but does fund them in 2020, do they count as an eligible expense for PPP loan purposes?**

Possibly. The maximum permitted PPP loan is generally limited to 250% of the employer's average monthly wages for either the 2019 calendar year or the 12 months preceding the application. Seasonal employers may use alternative measurement periods. Thus, if an employer was not funding group health premiums in 2019, such premiums would not be reflected in determining the loan amount. However, there is no specific requirement that limits payroll costs to the amount on which the measurement was based. It is possible that the SBA will issue guidance on this issue in the future.



## What documentation is needed to substantiate qualifying health insurance costs?

Appropriate substantiation of payroll costs is needed both when applying for a PPP loan and for purposes of demonstrating that the loan qualifies for forgiveness. Lenders are required to perform a good faith review of the submitted information; however, the SBA places ultimate responsibility to provide an accurate calculation of payroll costs on the borrower. The necessary documentation may vary based on lender requirements and also the particular expenses.

For example, pre-tax salary reduction contributions are not subject to income and Federal Insurance Contributions Act taxes, and thus will not be included in the employer's payroll tax report on IRS Form 941 (Employer's Quarterly Tax Return). Employers that use Form 941 to document their payroll costs will need to submit other information to document the amount of such pre-tax contributions, such as information from the payroll processor or appropriate receipts from insurers. Note: Any after-tax employee contributions are subject to income and FICA taxes and are included as wages on Form 941.

Employer funded group health plan premiums also are not subject to FICA taxes and are in addition to normal payroll and will not be reflected on Form 941. The employer will need to have other documentation to support the expense, such as level premium information from the insurer. For example, if the applicant has 10 employees, the SBA participating lender may want to see that the applicant is paying \$X per employee per month. Even if the lender does not ask for this information, the employer will want to keep records of their expenses in order to support claimed payroll costs in the event of an audit.



# General questions regarding PPP

## If I am an eligible small business, do I still have time to apply for a PPP small business loan?

Yes. PPP loans will be made to eligible small businesses through June 30, 2020. It's possible that funding will be exhausted before June 30 and may be by the publishing of this FAQ. Congress is working on a fourth COVID-19 relief package, which could include additional PPP loan funding. Please keep in mind that PPP loans are available on a first come, first served basis, putting a premium on acting quickly.

## What are the terms of a PPP loan?

PPP loans have a 100% SBA loan guarantee and qualify for full forgiveness of principal and accrued interest if the loan is used for qualifying purposes. One of the requirements for loan forgiveness is that 75% of the loan amount must be used for payroll costs. This means that employers can only use 25% of the loan amount for qualifying mortgage interest, rent or other qualifying nonpayroll costs. To the extent not forgiven, the loans have a term of two years and a 1.0% interest rate.

## I'm self-employed. Do I file for my own PPP loan?

It depends. If you are an independent contractor (1099 contractor) or sole proprietor and filed a Form 1040 Schedule C for 2019, you file for your own loan. The person that you did work for or the business that issued you a 1099-MISC doesn't include you in their loan application.

If you're a partner in a partnership or similar business entity, such as a limited liability company, you do not submit your own application. The partnership or similar entity makes the application.





## Will a PPP loan disqualify my business from other programs?

Yes. Some relief programs are not available to businesses (including independent contractors) that have received a PPP loan and/or had a PPP loan forgiven. For example, the SBA has stated that participation in the PPP loan program may disqualify individuals (such as 1099 contractors) from being eligible for unemployment compensation or unemployment assistance programs, including those authorized by the CARES Act. Employers who have received a PPP loan are not eligible for the [employee retention credit](#) provided by the CARES Act. For employers who are part of an aggregated group, receipt of a PPP loan disqualifies all members of the group from the credit. The CARES Act allows employers to [defer the employer portion of social security taxes](#) from 2020, and pay half the amount deferred in 2021 and the remainder in 2022. This deferral is not available for taxes after a PPP loan received by the employer has been forgiven.

## Are PPP loans taxable?

No. Even if a loan is forgiven, a PPP loan isn't taxable to the small business that receives the loan. However, [IRS Notice 2020-32](#) provides that a business isn't entitled to deduct expenses paid for with PPP loan proceeds that are forgiven. Key Congressional leaders stated that this wasn't the intent when the PPP was created. This issue could be clarified in the next COVID-19 relief bill.

# Conclusion

The PPP loan program may be helpful for many small businesses as they work to survive the economic situation relating to COVID-19. The lender is often the best place to go for information and assistance. Updated information and guidance, including regulations, forms and FAQs, may be found on the [SBA website](#).

The information above is provided for general informational purposes and is not provided as tax or legal advice for any person or for any specific situation. Employers and employees and other individuals should consult their own tax or legal advisers about their situation.

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