The CARES Act and Other COVID-19 Developments: An Update for Producers

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Today

- Paycheck Protection Program
- EIDL Loans
- Employee Retention Credit
- Payroll Deferral
- Families First Coronavirus Protection Act
- Economic Impact Payments
- Tax Return Delays
- Other Relief Provisions
Paycheck Protection Program Loans
PPP Loans – Money Ran Out April 16

The SBA is currently unable to accept new applications for the Paycheck Protection Program based on available appropriations funding. Similarly, we are unable to enroll new PPP lenders at this time.
PPP – Be Ready – Work with Lenders

3 hours ago - Both Democratic and Republican lawmakers agree that more money needs to be approved for the PPP, but they’re currently at an impasse ...

**Midwest Leaders**
A greater proportion of businesses in Midwest states have received SBA loans, even though larger-population states are getting more money overall.

**Paycheck Protection Program loans per 1,000 businesses with fewer than 500 workers**

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Center for A
Paycheck Protection Program

- Signed into law as part of the CARES Act.
  - Sections 1102 (eligibility & implementation), 1106 (forgiveness)

- Expands Small Business Administration’s section 7(a) loan program to offer 100% federally guaranteed loans to small businesses (and self-employed) struggling because of COVID-19.
  - Adds section 7(a)(36) to Small Business Act.
  - Opens door to businesses not generally eligible

- Program administered by SBA, with loans issued directly through approved lenders (your lender is your gateway)
PPP Basics

• $349 billion initially committed to this program
  • Largest prior 7(a) program was $28 billion

• Loans issued during the section 1102 “covered period,” February 15, 2020, through June 30, 2020, may be used for payroll and other expenses

• Forgiveness is available for eligible expenses paid during the section 1106 “covered period,” which is the 8-week period beginning on the date the funds are disbursed.
PPP Loan Terms

• Loan terms for unforgiven portion set by regulations:
  • 1 percent interest
  • Two-year term
  • One loan per borrower
  • e-signatures allowed
  • First come, first served
  • No payments for six months following disbursement
PPP Loan – SBA Rollout

When can I apply?

- Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Other regulated lenders will be available to make these loans as soon as they are approved and enrolled in the program.
PPP Eligibility - Agriculture

- Businesses with 500 or fewer employees whose principal place of residence is in the United States are generally eligible.

- There is no additional restriction on agricultural businesses applying for PPP loans.

- Although agricultural enterprises have been ineligible for SBA 7(b) loans, section 7(a) has had no such restriction (just a suggestion in the long-time rules to seek options through FSA first).
  - Nor does the statute place a revenue limit on these businesses
PPP Eligibility – Agriculture (USDA)

Q: Are agricultural producers, farmers, and ranchers eligible for the Small Business Administration’s Paycheck Protection Program (PPP)?

A: Agricultural producers, farmers, and ranchers with 500 or fewer employees whose principal place of residence is in the United States are eligible.

Farms are eligible if: (i) the farm has 500 or less employees, OR (ii) it fits within the revenue-based sized standard, which is on average annual receipts of $1M.

Additionally, farms can qualify for PPP if it meets SBA’s “alternative size standard.” The “alternative size standard” is currently: (1) a maximum net worth of the business not more than $15 million, AND (2) the average net income Federal income taxes of the business for the two full fiscal years before the date of the application be not more than $5 million.

Q: Are agricultural and other forms of cooperatives eligible for PPP?

A: As long as other eligibility requirements are met, small agricultural cooperatives may receive PPP loans. Other forms of cooperatives may be eligible provided they comply with all other Loan Program Requirements (as defined in 13 CFR 120.10).
PPP Eligibility – Self-Employed

• Guidance provided on April 14, 2020, states that the self-employed are eligible if they:
  
  • Were in operation on February 15, 2020
  • Have self-employment income as an independent contractor or sole proprietor
  • Principal place of residence is in the United States, and
  • Filed with or will file with a Schedule C for 2019

• Good news: Clarifies that self-employed with no employees are eligible
• Bad news: References only Schedule C. Schedule F farmers should qualify in similar way, in absence of further guidance. Need more!
PPP Eligibility – Partners

- Guidance provided on April 14, 2020, states that applications must be filed at the *partnership* level.
  - Self-employment income of general active partners may be reported as payroll costs, up to $100,000 annualized, on partnership application
  - This includes LLCs taxed as partnerships
  - It is not clear exactly what income may be included on the partnership application.
  - It is not clear what happens when a partner is in multiple partnerships or has a sole proprietorship as well.
  - It is not clear what happens to partner applications filed prior to guidance.
PPP Loan – Maximum Amount

- During the covered period, the loan amount is the lesser of:
  - $10,000,000 or
  - 250 percent of the average monthly “payroll costs” (prior twelve months or 2019 calendar year), plus any refinanced EIDL received after January 31, 2020

- Those not in business between February 15, 2019, and July 31, 2019 calculate average monthly payroll costs based upon the period beginning January 1, 2020, through February 29, 2020.

- Seasonal employers may calculate the average monthly payroll costs based on the 12-week period between February 15, 2019 and June 30, 2019, or, alternatively, from March 1, 2019 through June 30, 2019.
PPP Loan – “Payroll Costs”

• Salary, wages, commissions, and similar compensation
  • (not > $100K/employee); only count employees with principal residence in U.S.
• Payment of cash tips or equivalent
• Payment for vacation, parental, family, medical, or sick-leave (not through Families First Act)
• Allowance for dismissal or separation
• Payment required for group health care coverage, including insurance premiums and retirement for employees, not owners
• Payment of state or local tax assessed on employee compensation
• For an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment or similar compensation (in an amount <=$100,000 in one year) (owner compensation replacement)

Note: Payments to independent contractors do not count as payroll costs.
PPP Loan Amount – No Employees

Step 1: Find your 2019 IRS Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value). If this amount is over $100,000, reduce it to $100,000. If this amount is zero or less, no loan. (owner compensation replacement)

• Compare Schedule F, line 34

Step 2: Calculate the average monthly net profit amount (divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly net profit amount from Step 2 by 2.5.

Step 4: Add outstanding amount of Economic Injury Disaster Loan (EIDL) that you seek to refinance, less the amount of any advance.
PPP Loan Amount – Example (No Employees)

Charles has $75,000 in net income on line 34 of Schedule F (2019).

**Step 1:** No need to reduce to $100,000  
**Step 2:** $75,000/12 = $6,250  
**Step 3:** Multiply $6,250 by 2.5 = $15,625 (Eligible Loan Amount)

Current guidance doesn’t help farmers.  
• No provision for adding back depreciation or including Form 4797 gain from equipment sales.  
• If you have no Schedule F income, you are ineligible.  
• Property trades can drive down loan eligibility. Locked into 2019 numbers.
PPP Loan Documentation – No Employees

- Regardless of whether you have filed a 2019 tax return with the IRS, you must provide the 2019 Form 1040 Schedule C with your PPP loan application to substantiate the applied-for PPP loan amount.
- 2019 IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed.
- You must provide a 2020 invoice, bank statement, or book of record to establish you were in operation on or around February 15, 2020.
PPP Loan Amount – Employees

Step 1: Compute 2019 payroll by adding the following:
• 2019 Form 1040 Schedule C line 31 net profit amount, up to $100,000 annualized (owner compensation replacement)
• 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States (subtract amounts over $100,000 each)
• 2019 employer health insurance contributions, retirement contributions, and state and local taxes assessed on employee compensation

Step 2: Divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly net profit amount from Step 2 by 2.5.

Step 4: Add outstanding amount of Economic Injury Disaster Loan (EIDL) that you seek to refinance, less the amount of any advance.
PPP Loan Amount – Example (Employees)

Kristine has $75,000 in net income on line 34 of Schedule F (2019). She also has two employees, each earning $50,000, plus she pays $5,000 in health insurance for each employee.

**Step 1:** 2019 Payroll = $75,000 + $100,000 + $10,000 = $185,000

**Step 2:** $185,000/12 = $15,417

**Step 3:** Multiply $15,517 by 2.5 = $38,542 (Eligible Loan Amount)
PPP Loan Documentation – Employees

• You must supply your 2019 Form 1040 Schedule C, Form 941 (or other tax forms or equivalent payroll processor records containing similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions, if applicable.
• A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.
PPP Loan – Allowable Uses

- **Owner compensation replacement**, calculated based on 2019 net profit
- Employee payroll costs (if you have employees)
- Mortgage Interest, Rent, and Utility Payments
  - Mortgage interest payments (but not prepayments or principal payments) on business mortgage on real or personal property
    - e.g., interest on mortgage for the warehouse purchased to store business equipment or interest on auto loan for vehicle used to perform your business
  - Business rent payments
    - e.g., warehouse where you store business equipment
  - Business utility payments
    - e.g., cost of electricity in warehouse you rent or gas you use driving business vehicle.
- **Interest payments on other debts incurred before 2/15/20** (not forgivable)
PPP Loan – Allowable Uses

- The interim rule added the requirement that **75 percent of the PPP loan proceeds** be used for payroll costs.

- For purposes of loan forgiveness, the borrower will have to document the proceeds used for payroll.
PPP Loan – Misuse

• If PPP funds are used for unauthorized purposes, SBA will require the borrower to repay the loan, and the borrower may be subject to additional liability, such as charges for fraud.
PPP Loan – Loan Forgiveness

• Generally, a borrower is **eligible for loan forgiveness** in an amount equal to the sum of eligible costs incurred and payments made during the 8-week period beginning on the date the funds are disbursed.

• 75 percent of the amount forgiven must be attributable to payroll costs (including employee benefits and owner compensation replacement).

• Need more guidance on forgiveness.
PPP Loan Forgiveness (8-week period)

- Salary, wages, and tips, up to $100,000 of annualized pay per employee (for eight weeks, a maximum of $15,385 per individual)
- Covered benefits for employees (but not owners)
- Owner compensation replacement, calculated based on 2019 net profit, with forgiveness of such amounts limited to eight weeks’ worth (8/52) of 2019 net profit
- Payments of interest on mortgage obligations on real or personal property incurred before February 15, 2020.
- Rent payments on lease agreements in force before February 15, 2020
- Utility payments under service agreements dated before February 15, 2020
PPP Loan – Loan Forgiveness

Reduction in Number of Employees:

• Loan forgiveness is reduced by multiplying the presumed forgiveness amount by (the average full-time equivalent employees (FTEs) during the covered period ÷ average FTEs for the period from February 15, 2019 through June 30, 2019 or January 1, 2020 through February 29, 2020, at the election of the borrower). (Special rules apply to seasonal employers)

• No reduction of employees, no reduction in forgiveness

• Need guidance on forgiveness provisions
PPP Loan – Loan Forgiveness

Salary and Wage Reduction:

• Loan forgiveness is reduced by any reduction in total salary or wages of any employee during the covered period that is in excess of 25 percent of the total salary or wages during the most recent full quarter during which the employee was employed before the eight-week coverage period (FTE).
  • Employees who received, during any single pay period during 2019, wages or salary at an annualized rate of pay in excess of $100,000 are not included in this calculation.
• Reductions in employees, salaries and wages that occur between February 15, 2020 and April 26, 2020, are disregarded for purposes of the forgiveness reduction as long as the reductions are eliminated by 6/30/20.
PPP Loan – Application for Forgiveness

• In addition to the borrower certification required to substantiate your request for loan forgiveness, if you have employees, you should submit Form 941 and state quarterly wage unemployment insurance tax reporting forms or equivalent payroll processor records that best correspond to the eight-week covered period (with evidence of any retirement and health insurance contributions).

• Whether or not you have employees, you must submit evidence of business rent, business mortgage interest payments on real or personal property, or business utility payments during eight-week covered period if you used loan proceeds for those purposes.

• The 2019 Form 1040 Schedule C that was provided at the time of the PPP loan application must be used to determine the amount of net profit allocated to the owner for the eight-week covered period.
PPP Loan – Impact of Forgiveness

• Forgiveness will not be granted absent required documentation
• Lenders have 60 days to review and make a determination on the forgiveness application
• Lender will be held harmless for decisions made based upon erroneous documentation

• *Forgiven loans will be excluded from gross income of the borrower.*
  • Need guidance on whether borrower can continue to deduct costs.
PPP Loan – Forgiveness Example

Charles had $75,000 in net income on line 34 of Schedule F (2019). He received a loan for $15,625 on April 14, 2020. During the next eight weeks, he incurred the following expenses:

- $15,000 rent
- $6,000 utilities
- $10,000 repairs

Charles will be able to apply for forgiveness on:

- $11,538 (owner replacement for 8 weeks) ($75,000/52 * 8)
- $11,538/.75 = $15,384 forgivable proceeds (75% of forgiven amount must be owner compensation/payroll)
- $3,846 toward rent or utilities (not repairs) (25%) ($15,384 - $11,538)

$241 not forgivable. De minimis rule?

This is how we think it will work. Need more guidance.
Notice: Lapse in Appropriations

SBA is unable to accept new applications at this time for the Economic Injury Disaster Loan (EIDL)-COVID-19 related assistance program (including EIDL Advances) based on available appropriations funding.

Applicants who have already submitted their applications will continue to be processed on a first-come, first-served basis.
EIDL Loan – Basics

• The CARES Act also expanded the ability of SBA to provide section 7(b) small business economic injury disaster (EIDL) loans.
  • These are traditional disaster loans to small businesses.

• Eligible business owners (requirements have been relaxed) may receive an advance on the loan up to $10,000
  • Emergency EIDL grant, supposed to receive in 3 days
  • Used for sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, or repaying obligations that cannot be met due to revenue losses
  • The applicant is not required to repay the advance, even if the business is subsequently denied an EIDL.
  • If receives a PPP loan, $10,000 reduces loan forgiveness available.
  • Available through 12/31/2020
EIDL Loan – Producers Not Eligible

7(b) Disaster loans; authorization, scope, terms and conditions, etc. Except as to agricultural enterprises as defined in section 647(b)(1) of this title, the Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

• Although it expanded the eligibility of businesses eligible for EIDL loans, the CARES Act did not modify the provision excepting “agricultural enterprises”
  • Small agricultural cooperatives are specifically eligible
• Some evidence Congress did not intend to exclude agricultural enterprises, but at this time EIDLs are not an option for agricultural enterprises.
Employee Retention Credit
Employee Retention Credit

• Not allowed if business receives a PPP loan / Can’t count Work Opportunity Credit wages
• Section 2301 of the CARES Act allows “eligible employers” a refundable payroll tax credit equal to 50 percent of qualified wages paid to each employee for each calendar quarter during the COVID-19 crisis.
  • Applies to qualified wages paid after March 12, 2020, and before January 1, 2021
• The qualified wages which may be taken into account cannot exceed $10,000 per employee for all quarters (maximum credit is $5,000 per employee)
• The credit is allowed against applicable employment taxes (6.2% employer’s share) on the qualified wages (reduced by any credits taken under the Families First Coronavirus Response Act), but balance is refundable.
ERC – Eligible Employers

• Those employers (including non-profit employers) whose businesses were fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19 (no size limit) OR

• Those employers that experienced a “significant decline in gross receipts” for a given calendar quarter
  • An employer becomes an “eligible employer” under the “significant decline in gross receipts” test during the first calendar quarter for which gross receipts for that quarter are less than 50 percent of gross receipts for the same calendar quarter in the prior year.
  • The eligibility period ends in the calendar quarter following the first calendar quarter in which gross receipts are greater than 80 percent of gross receipts for the same calendar quarter in the prior year.
ERC – Qualified Wages

- The definition of "qualified wages" depends upon the size of the employer:
  - Eligible employers that had an average of 100 or fewer full-time employees in 2019 may take the credit for all employee wages, whether or not the employee was furloughed.
  - For eligible employers with more than 100 average employees in 2019, the employer may take the credit only for the wages of employees who were actually furloughed or placed on reduced hours because of a business closure or reduced gross receipts.
  - The definition of "qualified wages" includes the cost of health benefits.
ERC – Form 7200 (IRS Example)

- An Eligible Employer paid $20,000 in qualified wages, and is entitled to a credit of $10,000, and is otherwise required to deposit $8,000 in federal employment taxes, including taxes withheld from all of its employees, on wage payments made during the same calendar quarter.
- The employer has no paid sick or family leave credits under the FFCRA. The Eligible Employer can keep the entire $8,000 of taxes that the Eligible Employer was otherwise required to deposit without penalties as a portion of the credits it is otherwise entitled to claim on the Form 941. The Eligible Employer may file a request for an advance credit for the remaining $2,000 by completing Form 7200.
Delayed Payment of Payroll Taxes
Delayed Payroll Taxes

• Cannot take advantage of this provision once you receive a positive decision on PPP loan forgiveness

• Section 2302 of the CARES Act allows employers to temporarily defer payment of the employer’s portion of social security and RRTA payroll taxes (6.2%).
  • It provides the same opportunity to self-employed individuals for ½ of the self-employment tax.

• The requirement to deposit these taxes is delayed through the end of 2020. The delayed taxes must then be repaid in two equal installments, one due by December 31, 2021, and the other due by December 31, 2022.
  • Use caution regarding the future balloon payment!
Families First Coronavirus Response Act
Families First Coronavirus Response Act

- H.R.6201, Effective April 1, 2020
- Temporary expansion of FMLA
- The law requires most private employers with fewer than 500 employees to provide emergency paid sick leave (Emergency Paid Sick Leave Act) and emergency paid family and medical leave (Emergency Family Medical Leave Expansion Act) to their employees for coronavirus-related absences.
- It also creates a corresponding refundable paid sick leave credit and paid child care leave credit for these employers.
- Also available to the self-employed.
FFCRA – Small Business Exemption

• Small businesses with fewer than 50 employees AND
  • Employee’s leave is to care for his or her child whose school or place of care is closed (or child care provider is unavailable), but only if
    • Requirements of the FFCRA jeopardize business viability
FFCRA – Notice

• Poster must be conspicuously posted, may be distributed online, posted on employer website, directly mailed or e-mailed to employees—
  • Does not have to be visible to job applicants
    • DOL Spanish and English FFCRA posters available online at www.dol.gov/agencies/whd
Other Tax Provisions
Economic Impact Payments

- Law calls them “recovery rebates”
  - IRS has named them “economic impact payments”

- $1,200 for eligible individuals, $2,400 for joint filers
  - $500 for qualifying child (< 17 years)
  - Must have social security numbers

- “Eligible individual” does not include:
  - Nonresident aliens, individuals who can be considered dependents, or Estates or trusts

- Phased out by five percent of amount by which taxpayer’s AGI exceeds:
  - $150,000 for joint return filers
  - $112,500 for head of household
  - $75,000 for other taxpayers
Economic Impact Payments

**Filers: Get Your Payment**

Use the "Get My Payment" application to:

- Check your payment status
- Confirm your payment type: direct deposit or check
- Enter your bank account information for direct deposit if we don't have your direct deposit information and we haven't sent your payment yet

[Get My Payment]

**Update your bank account or mailing address**

- If we don’t have your direct deposit information from your 2018 or 2019 return – and we haven’t yet sent your payment – use the Get My Payment application to let us know where to send your direct deposit.
- **2019 Filers:** We will send your payment using the information you provided with your 2019 tax return. You will not be able to change it.
- **2018 Filers:** If you need to change your account information or mailing address, file your 2019 taxes electronically as soon as possible. That is the only way to let us know your new information.

**Non-Filers: Enter Your Payment Info Here**

If you don’t file taxes, use the "Non-Filers: Enter Your Payment Info Here" application to provide simple information so you can get your payment.

You should use this application if:

- You **did not file** a 2018 or 2019 federal income tax return because your gross income was under $12,200 ($24,400 for married couples). This includes people who had no income. Or
- You **weren’t required** to file a 2018 or 2019 federal income tax return for other reasons.

Do not use this application if you receive the benefits below. If you receive these benefits, we already have your information and you will receive $1,200.

- Social Security retirement, disability (SSDI), or survivor benefits
- Railroad Retirement and Survivor Benefits

**Special note:** People in these groups who have qualifying children under age 17 can use this application to claim the $500 payment per child.
## Economic Impact Payments

| ... and you filed a tax return for 2019 or 2018, but you **owed tax** or **didn’t choose direct deposit** for tax refund. | No, do not use Non-Filers: Enter Payment Info Here.  
You don’t need to do anything else to get your Economic Impact Payment in the mail. You may be able to provide direct deposit information to the IRS to get your payment in your bank account instead. | **Track the status:** You can use the Get My Payment tool on IRS.gov to track the status of your Economic Impact Payment once the IRS has processed your return.  
**Add direct deposit information:** You may be able to use the Get My Payment tool on IRS.gov to provide direct deposit account information once the IRS has processed your return. If this tool doesn’t offer you the option to provide your direct deposit information, it means the IRS will mail your Economic Impact Payment. |

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**Note:** These payments are NOT taxable income and will not impact your 2020 income tax return in a negative way.
Filing Delays

• Federal
  • Taxpayers with a filing or payment deadline on or after April 1, 2020, and before July 15, 2020, generally have until July 15 to file or pay (includes estimates)
  • Delays deadline for contributions to IRAs, qualified retirement plans, HSAs, Archer MSAs as well

• Iowa has extended the deadline for returns and payments due on or after March 19 and before July 31, 2020, to July 31, 2020
  • Conditional penalty relief for estimated payments
Retirement Plan Changes

• Section 2203 temporarily waives **required minimum distributions** for 2020
  • This applies to ALL RMD, even those for beneficiaries.
  • If someone already took their RMD, remember the 60-day recontribution.
    • If outside of that window, no relief at this time
Student Loan Changes

• CARES Act has suspended federal student loan payments through September 30, 2020, and the interest rate has been temporarily set to zero on a number of federal loans.
Net Operating Loss Changes

• Section § 2303(b) of the CARES Act provides that net operating losses arising in tax years beginning in 2018, 2019, and 2020 are to be carried back five years.
  • To carry back NOLs to prior tax years, taxpayers may file an application for a tentative refund, Form 1139, for corporations and Form 1045 for individuals, estates, and trusts. This expedited process is only available through June 30, 2020 for 2018 losses.
  • Talk to tax advisor.
Other Possible Relief for Farmers

- Unemployment through Pandemic Unemployment Assistance Program may be an option for some
  - Not available if you receive a PPP loan
- USDA will soon be announcing plans for money allocated to farm relief by the CARES Act
  - $ 9.5 billion – disaster aid
  - $14 billion - CCC
  - PPP loans should not impact farmers’ eligibility for farm program payments
    - Must watch for any guidance associated with new programs
- Marketing loans extended from 9 months to 12 months
- Watch for any new relief coming through future legislation (Phase IV?)
- Work with FSA and other lenders regarding possible deferrals
Updating Resources – Ever Changing

- [www.calt.iastate.edu](http://www.calt.iastate.edu) (Center for Ag Law & Taxation)
- [www.extension.iastate.edu/agdm](http://www.extension.iastate.edu/agdm) (Ag Decision Maker) (look under Hot Topics)