

## FAQs for Individuals With Questions About the Intersection Between the Participation in the CARES Act Paycheck Protection Program and PPP and Receiving New York Unemployment and/or Pandemic Unemployment Assistance (as of 5/11/20)

### What is the Paycheck Protection Program (“PPP”)?

PPP<sup>1</sup> is a component of the CARES Act passed by Congress in March 2020. The purpose of the program is to provide relief funds to small businesses<sup>2</sup> (businesses with 500 or fewer employees) or self-employed/sole proprietors,<sup>3</sup> via SBA-approved lenders<sup>4</sup>, who certify that the support is necessary support ongoing operations of their business. The underlying objective of PPP is that rather than forcing mass layoffs and/or reducing salaries in the midst of the COVID-19 crisis, and pushing more individuals than necessary to seek unemployment benefits, small businesses can retain their workers on payroll, and hit the ground running when business activity resumes.

### How are PPP funds to be used?

PPP funds are to be used primarily for payroll expenses including wages, even if the business’s employees are not working in the business’s office, restaurant or workplace. If the lender approves a borrower’s application for forgiveness, the loan will be converted to a grant, the debt will be forgiven, and the small business will not need to pay back the funds.<sup>5</sup> Otherwise, the loan must be repaid at a 1% interest rate with the repayment beginning 11 months after receiving the loan.<sup>6</sup> In order to be forgiven, 75% of the loan must be spent on payroll costs in the schedule and amount you would in the ordinary course of business, including compensation to employees in the form of a salary, wage, commission, cash tip, payment for leave, severance, group health care benefit, retirement benefit and state or local taxes assessed on employee compensation.<sup>7</sup> The remaining 25% may be used for expense that are

<sup>1</sup> The following is a general overview. For additional information about PPP, go to <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program> and <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>.

<sup>2</sup> Loan amounts are calculated based on the prior year’s monthly average of payroll expenses (which includes healthcare and retirement benefits), multiplied by 2.5. Please note this is the average, so best practice is to take the yearly payroll expense and divide by 12. For additional guidance, see <https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf>.

<sup>3</sup> Self-employed or sole proprietor applicants use net income based on 2019 Form 1040 Schedule C Line 31 (capped at \$100,000) for the yearly payroll expenses. Divide this number by 12, and multiply by 2.5 to find the loan amount. <https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf>

<sup>4</sup> In addition to banks, SBA-approved lenders now include financial technology companies like [Paypal](#), [Square](#), [Quickbooks](#), [OnDeck](#), [Funding Circle](#), [Kabbage](#), [Bluevine](#), [Credibly](#), and [Fundbox](#), as well as certain credit unions. The PPP program was re-funded in April 2020, after the first round of available loans was depleted. It is possible that the second round of funding will also be depleted in the short term.

<sup>5</sup> If you have laid off employees or reduced pay by more than 25% after February 15, 2020, your forgiveness amount will be reduced proportionally. However, if you have rehired and/or reinstated pay to within the 25% threshold by June 30, 2020 your forgiveness rate will not be effected. The SBA and Treasury have advised that if a specific employee does not agree to return to payroll, forgiveness will not be precluded by that former employee’s action, if the borrower “made a good faith, written offer of rehire, and the employee’s rejection of that offer [is] documented by the borrower.” See <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>, #40.

<sup>6</sup> Keep in mind that if you are willing to take on the loan without forgiveness, you remain bound by the requirements of the program in how the money is used. Thus, the proceeds should be used for payroll costs, including benefits; interest on mortgage obligations, incurred before February 15, 2020; rent, under lease agreements in force before February 15, 2020; and utilities, for which service began before February 15, 2020.

<sup>7</sup> Payroll costs may not include: (1) compensation to an individual employee in excess of an annual salary of \$100,000 (not including the value of non-cash benefits), (2) the employer’s share of FICA taxes, (3) compensation to employees whose principal place of residence is outside the US, (4) qualified sick or family leave for which credit is allowed under the Families First Coronavirus Response Act or (5) compensation to independent contractors or sole proprietors.

“ordinary and necessary,” including rent, utilities, and other fixed monthly costs. A business that also received an SBA Economic Injury Disaster Loan (EIDL) grant will see that amount subtracted from its PPP forgiveness amount. PPP Loan proceeds are to be spent over 8 weeks. The 8-week period begins on the day of first disbursement by the lender to the small business.<sup>8</sup>

### What is the process for having a PPP loan converted to a grant?

A business may apply to the lender that is servicing its loan for forgiveness. While additional guidance is anticipated, to date we expect that the request for forgiveness will require documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.<sup>9</sup>

### What Unemployment Programs Are Available in New York During COVID-19?

In the wake of the COVID-19 crisis, with unprecedented numbers of people applying for unemployment benefits, traditional Unemployment Insurance (“UI”) benefits have been expanded in New York State to include self-employed workers and independent contractors, or those who worked for an app-based company and farmers, who are:

- Diagnosed with COVID-19 or who have COVID-19 symptoms and are seeking a diagnosis;
- Living with a household member who has been diagnosed with COVID-19;
- Providing care for a family or household member diagnosed with COVID-19;
- A primary caregiver for a child unable to attend school or another facility due to COVID-19;
- Those unable to reach their place of employment due to an imposed quarantine or because they have been advised by a medical provider to self-quarantine due to COVID-19;
- Those scheduled to commence new employment that cannot reach their workplace as a direct result of COVID-19;
- Those who became a major breadwinner because the head of their household died from COVID-19;
- Those whose place of employment closed as a direct result of COVID-19;
- Those who quit their job as a direct result of COVID-19;
- Those whose place of employment closed as a direct result of COVID-19;
- Those with insufficient work history and affected by COVID-19; and
- New Yorkers otherwise not qualified for regular or extended unemployment benefits and affected by COVID-19.

A person is not eligible for PUA benefits if they are able to telework with pay, or if they receive paid sick leave or other paid leave benefits from their employer (regardless of whether they meet any of the above criteria).

As always, traditional unemployment benefits are available to those who have lost their jobs through no fault of their own and are (i) unable to work, (ii) ready, willing, and able to work, and (iii) actively looking for employment.

The current maximum weekly benefit rate for both unemployment and PUA in New York is currently \$504 a week. You can calculate your basic estimated benefits at <https://labor.ny.gov/benefit-rate-calculator/>. If an individual applies for both PUA and traditional unemployment they will only be able to receive one.

- In addition, if you are receiving full or partial PUA or UI, **you will automatically receive an additional \$600 a week through July 31, 2020** through the Pandemic Unemployment Compensation program. These payments

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<sup>8</sup> See <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>, #20.

<sup>9</sup> <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>.

will be made starting either when you became eligible for unemployment or New York State signed an agreement to provide benefits: whichever is later. **There is no separate application process.** <https://dol.ny.gov/pandemic-unemployment-assistance>

- Also note that PUA and unemployment must be claimed weekly even **after** your application goes through, and may be paid retroactively for periods of unemployment starting on or after January 27, 2020.

### **Can I benefit from both PUA/UI and PPP?**

Yes, you can apply for or benefit from both programs so as long as you qualify at the time of submitting your respective applications. **However, you can only use money from one program at a time**, i.e., during the period that your employer is paying you via PPP you cannot receive PUA/UI, or if you are self-employed you cannot “double dip” during the 8 week period designated for expenditure of received PPP funds. The same is true to the extent a business uses EIDL proceeds to cover salary during a specific period.

- Employees: If you have been receiving PUA/unemployment and then begin receiving payment from your employer through PPP, you need to let the NYS Labor Department know in your weekly claim of benefits (see here: [labor.ny.gov](https://labor.ny.gov)) and halt PUA/unemployment payments. **Failure to do so will require paying back the money to the State at a later date and you may be charged with fraud.** Once the PPP payments are exhausted and if you once again meet the PUA/UI criteria, you can reapply for PUA/UI.
- Sole Proprietors/Self-Employed: You will need to stop submitting weekly claims for PUA/unemployment benefits from the receipt of your PPP loan proceeds. **Failure to do so will require paying back the money to the State at a later date and you may be charged with fraud.** Once the PPP funds are exhausted, and if you once again meet the PUA/UI criteria, you can reapply for PUA/UI and again begin receiving benefits from PUA/unemployment. Any unemployment or PUA benefits that would have been paid retroactively for prior periods of unemployment or unemployment benefits already received do not appear to be required to be paid back as they were received during and for periods of unemployment.

### **If I am a sole proprietor or self-employed and receive a PPP Loan, can I pay myself the full amount from the PPP loan at once, and claim unemployment during weeks 2-8 after using the loan proceeds?**

No. This runs in contrast to the purpose of both PPP and unemployment benefits. As discussed above, you can only receive payments from one program at a time.

### **If I am a sole proprietor or self-employed, does PPP make more sense for me than applying for PUA?**

This will be an individual assessment based on the amount and timing of the two programs, as well as questions particular to you, such as whether you have access to a lender who is willing and able to process your PPP application. You can assess your options by comparing the amount for which you may be eligible under PPP -- <https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf> and PUA/UI -- <https://labor.ny.gov/benefit-rate-calculator/>. Additional considerations include the time and administrative attention required to the PPP Loan process, and documenting use of the loan proceeds in order to request forgiveness. Each business/self-employed individual will need to make an individual assessment.

### **If I have been laid off, am receiving UI/PUA, and my employer receives a PPP loan and seeks to have me return to payroll, can I decline to do so and remain on UI/PUA?**

No. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.<sup>10</sup> If your employer offers you payroll payments on PPP that are below \$504 a week, you may be able to claim partial UI/PUA benefits to bring you to the full \$504 amount.

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