



Key Details of the Paycheck Protection Program Under the CARES Act

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On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), a \$2 trillion economic stimulus package passed in response to the COVID-19 pandemic, was signed into law. The CARES Act provides various forms of federal economic support to businesses, employees, individuals and families. One of signature provisions of the CARES Act is the Paycheck Protection Program, which is a \$349 billion SBA-administered loan and loan forgiveness program. Borrowers will be able to begin submitting loan applications on April 3, 2020.

Paycheck Protection Program Overview

The Paycheck Protection Program provides federally-guaranteed loans up to a maximum amount of \$10 million to eligible borrowers for specific purposes, such as payroll costs and rent. As discussed below, as an incentive to businesses to retain employees through the COVID-19 crisis, some portion of loans may be forgivable. To accommodate for this SBA expansion, the CARES Act has authorized commitments to the SBA 7(a) loan program, as modified by the CARES Act, in the amount of \$349 billion. The Paycheck Protection Program covers the period beginning February 15, 2020 and ending on June 30, 2020 (the "Covered Period").

Who is Eligible?

Small businesses with 500 or fewer employees—including nonprofits, veterans organizations, tribal concerns, self-employed individuals, sole proprietorships, and independent contractors— are eligible to apply for loans under the Paycheck Protection Program. The 500-employee threshold includes full-time and part-time employees, including seasonal employees. Employers must also include employees of affiliated companies under the 500 employee test, and the SBA defines affiliates broadly.

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Businesses with more than 500 employees in certain industries, such as the hospitality and dining industry, are also eligible. For example, businesses in the hospitality and dining industry (designated as such under the North American Industry Classification System) that employ fewer than 500 employees per physical location are eligible to borrow under the program.

What is the Maximum Loan Amount?

Eligible entities may borrow the lesser of \$10 million, or 2.5 times average monthly payroll costs for the one-year period before the loan is made. Payroll costs include not just wages and salary (capped at \$100,000), but also paid leave, health insurance premiums, retirement plan benefits, and payments to independent contractors. Loans bear interest at a rate of 1%, and any unforgiven amounts must be repaid in two years. There is a six month deferment period before payments begin.

How Can Proceeds be Used?

The proceeds of a Paycheck Protection Program loan may be used to pay for only the following items (in each case, subject to certain specified exclusions):

- payroll costs
- costs related to group health care benefits during periods of paid sick, medical or family leave, and insurance premiums
- employee salaries, commissions, or similar compensation
- mortgage interest payments (but not any prepayment of or payment of principal on a mortgage obligation),
- rent
- utilities
- interest on any other debt obligations that were incurred before the Covered Period

What Aspects of Paycheck Protection Program Loans are Forgivable?

During the eight-week period following the date on which a Paycheck Protection Program loan is funded, borrowers are eligible for loan forgiveness for up to the full principal amount of such loan. The amount eligible for forgiveness is equal to the total costs incurred and payments made during the forgiveness period for payroll costs plus any payment of interest on any covered mortgage obligation (not including any prepayment of or payment of principal on a covered mortgage obligation), plus any payment on any covered rent and utility obligation.

The amount eligible for forgiveness may be reduced by three mechanisms, all of which are applicable separately. First, any loan forgiveness amount is subject to reduction by a percentage determined by dividing the average number of a borrower's full time equivalent employees during the eight week period after the loan is received by the average number of full time equivalent employees during a similar period in 2019.



Second, the amount eligible for forgiveness may be reduced dollar for dollar by any reduction in employee wages greater than 25%. This is determined by comparing the employee's annualized wages in the eight week period after the loan is received to the employee's annualized wages in the previous quarter. This reduction is calculated on a per-employee basis. However, loan forgiveness will still be available to businesses that re-hire workers they previously laid off or that make up for wage reductions by June 30, 2020. Borrowers will have to provide employment and wage-related documentation to lenders in order to be eligible for loan forgiveness.

Third, borrowers must use 75% of loan proceeds on payroll costs. Accordingly, while loans may be used for things like mortgage interest and utilities, such expenditures may only equal 25% of the amount of the loan.

What are the Collateral Requirements for Loans?

A borrower will not be required to pledge any collateral or provide personal guarantees to secure or support a Paycheck Protection Program loan.

What is the Application Process?

Starting today, April 3, 2020, small businesses and sole proprietorships can apply. Starting April 10, 2020, independent contractors and self-employed individuals can apply. Applications can be made through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Loans are made on a first come, first served basis. The amount of money allocated to this program is substantial, but limited. Accordingly, borrowers should not wait too long to apply.

While no explicit guidance has been issued as to what documentation will be required as part of an application, businesses should be prepared with payroll, tax and other documents necessary to support their loan request, as well as a completed application form. Additional information about the Paycheck Protection Program is available on the U.S. Department of the Treasury website.

If you have questions about how this article applies to your specific situation, please contact a Foster Swift attorney for assistance.

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