

COVID-19 SBA FAQs: Paycheck Protection Program

Robinson+Cole has been tracking relief programs being offered by the Small Business Administration ("SBA") to help alleviate the economic impact of COVID-19 on small businesses in the United States. The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was signed into law on March 27, 2020. Among other things, the CARES Act offers businesses immediate access to liquidity through a new loan program entitled the "Paycheck Protection Program." An overview of the Paycheck Protection Program is set forth below.

What is the Paycheck Protection Program?

- + The Paycheck Protection Program provisions of the CARES Act enables the SBA to offer federally-guaranteed emergency loans to qualifying small businesses ("PPP Loans") to assist them in dealing with the economic impact of the COVID-19 pandemic. PPP Loans are interest bearing (not more than 4%), non-recourse loans from lenders authorized by the SBA (which are guaranteed by the SBA); they are not direct loans from the SBA. PPP Loans are intended to be forgivable if the borrower complies with the CARES Act (see question below regarding SBA's definition of a "small business"). Congress has appropriated \$349 billion for this program.

What businesses are eligible to apply?

- + PPP Loans are available to businesses in operation on February 15, 2020 that meet one of the following criteria: (a) a "small business" that meets the SBA's size standards (see question below regarding the SBA's definition of a "small business"); (b) any business with 500 or fewer full-time, part-time or other employees (including any tax-exempt 501(c)(3) entity with fewer than 500 employees);¹ (c) an individual who operates as a sole proprietor, independent contractor or is self-employed and regularly carries on any trade or business; (d) a Tribal business concern that meets the applicable SBA size standard; (e) a tax-exempt 501(c)(19) Veterans Organization that meets the applicable SBA size standards (see question below regarding the SBA's definition of a "small business"); or (f) a food service business (NAICS 72) which operates multiple physical locations, but that do not employ more than 500 persons per location. During the covered period (i.e. February 15, 2020 until June 30, 2020), the "credit elsewhere" requirement is waived (i.e. PPP Loans are available to businesses regardless of their ability to find alternative funding). All businesses applying for PPP Loans are required to certify in good faith to their respective lender that they require the funds to operate due to the current economic disruption caused by COVID-19 and that they will only use the PPP Loan funds for eligible uses under the CARES Act.

What are the SBA's standards for a "small business"?

- + The SBA's definition of a "small business" depends on the company's industry (based on its applicable NAICS code) and is generally based on the company's total number of employees or the company's total annual receipts. The SBA has a comprehensive table of standards that are used to determine the size of a business. These standards are tied to NAICS codes (the applicable threshold for each industry can be found [here](#)). For purposes of SBA size standards, a business needs to include the employees or receipts of all affiliates, unless an exemption applies. Affiliation with another business is based on the power to control the business, regardless of whether control is actually exercised. For PPP Loans, affiliation rules are waived for borrowers that are: (a) an SBIC-financed small business; (b) a small business in the food service sector (NAICS 72), and (c) franchises assigned with a franchiser identifier code by the SBA. The SBA franchise directory can be found [here](#).

How much can a business borrow?

- + Eligible businesses may borrow the **lesser** of: (a) \$10 million; or (b) (i) for small businesses that existed during the period beginning on February 15, 2019, and ending on June 30, 2019, the borrower's total average monthly payroll costs incurred during the 1 year period before the date on which the loan is made, **times 2.5, plus** the outstanding amount of any 7(a) loan made during the period beginning January 31, 2020 and ending on the date the loan is made, or (ii) for small businesses that did not exist during the period beginning on February 15, 2019 and ending on June 30, 2019, the borrower's total average monthly payroll costs incurred between January 1, 2020 and February 29, 2020, **times 2.5, plus** the outstanding amount of any 7(a) loan made during the period beginning January 31, 2020 and ending on the date the loan is made. Please note that compensation of an individual employee in excess of an annual salary of \$100,000 must be excluded from the borrowing formula set forth above.

What is the interest rate?

- + The maximum interest rate for a PPP Loan is 4%.

Does the SBA have collateral requirements for PPP Loans?

- + No. There are no collateral requirements for PPP Loans, and applicants are not required to provide a personal guarantee. In addition, the CARES Act specifically provides that each PPP Loan is nonrecourse to the shareholders, members and partners of the borrower, except to the extent that such shareholder, member or partner uses the PPP Loan proceeds for an unauthorized purpose.

¹ Although the CARES Act does not specifically state that affiliation rules apply to businesses who qualify because they have 500 or less employees, the affiliation waiver provisions of the CARES Act suggest that the rules are intended to apply unless there is an express exemption. Regulations may provide clarity on this matter. Assuming the affiliation rules apply, the total number of employees would need to include employees of the applicant as well as employees of all the business' affiliates (i.e. the total number of employees of the business, any parent, any subsidiary and any other business under common control).

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What can the proceeds of these loans be used for?

- + PPP Loans may be used to pay (1) payroll costs, (2) costs related to the continuation of group healthcare benefits, (3) employee salaries and compensation (excluding annualized compensation paid to an individual employee in excess of \$100,000), (4) payments of interest on a mortgage obligation (but not prepayment of or payment of principal on a mortgage obligation), (5) rent (including rent under a lease agreement), (6) utility costs and (7) interest on other debt obligations incurred prior to February 15, 2020 (collectively, "**Eligible Uses**").

When does the loan need to be repaid?

- + The maximum term for any PPP Loan is 10 years. PPP Loan payments will be deferred for the first 6-12 months.

Can these loans be forgiven?

- + Yes. PPP Loans will be eligible for forgiveness up to the principal amount borrowed, provided that the borrower can demonstrate that the loan proceeds were used for Eligible Uses. The amount of a PPP Loan eligible for forgiveness will be reduced to the extent that a borrower (a) reduces employees during the 8-week period beginning on the date the lender originates the PPP Loan for the borrower (the "**Covered Period**"), or (b) reduces salary or wages of any employee more than 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before to the Covered Period. If the borrower rehires or ends the salary reduction before June 30, 2020, however, then the borrower has eliminated the layoff or salary reduction and its loan amount eligible for forgiveness will not be affected. Forgiven amounts are excluded from taxable income. It is important to note that the SBA and Treasury may issue regulations that grant "de minimis exemptions" from these forgiveness requirements.

What documentation is required for loan forgiveness?

- + Borrowers must apply for forgiveness directly with their PPP Loan lender. Borrowers will be required to submit documentation verifying full-time equivalent employees on payroll and pay rates, payroll tax filings, state income, payroll and unemployment insurance filings, documentation verifying payments for eligible purposes, and a certification that the documentation submitted is true and correct and the amount for which forgiveness is requested was used for eligible purposes. Any loan amounts that are not forgiven will be carried forward as an ongoing loan with a maximum term of 10 years, at a maximum interest rate of 4%. Principal and interest will continue to be deferred for 6-12 months after disbursement of the loan (the clock does not restart).

Will my business' application for a PPP Loan be approved?

- + There are three general criteria for approval of a PPP Loan: (a) the applicant must make a good faith certification that the uncertainty of current economic conditions makes the loan necessary to support ongoing operations, (b) the applicant must agree that funds will be used for Eligible Uses, and (c) the borrower has not applied for or received a loan duplicative of the purpose and amounts applied for under the PPP Loan application. Please note, however, there is an opportunity to fold emergency loans received after January 31, 2020 into a new PPP Loan. The CARES Act directs lenders to further consider whether the applicant business was in operation before February 15, 2020 and had employees for whom they paid salaries and payroll taxes or paid independent contractors.

Is there an application deadline?

- + Businesses **must** apply prior to June 30, 2020 to be eligible for a PPP Loan.

How does a business apply?

- + Businesses should contact a registered SBA lender to discuss beginning the application process. The SBA's lender match program can be found [here](#). New lenders may be authorized from time to time by the Department of Treasury, including non-bank lenders, to help meet the needs of small business owners. The SBA encourages businesses to apply for PPP Loans as soon as possible.

This alert is being issued as of March 30, 2020. Please note that the SBA has up to 30 days following the enactment of the CARES Act to issue guidance and regulations under certain provisions of the CARES Act which could, among other things, modify eligibility and/or loan requirements.

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