

CARES Act Paycheck Protection Program

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Paycheck Protection Program

- President Trump signed CARES Act into law on March 27, 2020. The Act provides an estimated two trillion dollars' worth of relief for individuals and businesses
- The Act's purpose is to mitigate the effects of the ongoing COVID-19 pandemic
- The Act provides emergency funds in the form of loans, credits, and grants to businesses of all sizes

Paycheck Protection Program: Eligibility

- Applicant must have been operational as February 15, 2020; and
- Applicant must have paid wages and payroll taxes

PPP Size Limitations

- Businesses with up to 500 employees
- Small business concerns as defined by SBA regulation
- Business in Accommodation and Food Service Industries that do not have more than 500 employees per location
- Alternative size standard:
 - (1) maximum tangible net worth of the business is not more than \$15 million; and
 - (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million

PPP Size Limitation - Affiliation

SBA affiliation rules generally apply but are waived for:

- Businesses in the Accommodation and Food Service industry with less than 500 employees
- Franchises
- Businesses that receive financial assistance from a small venture investment company licensed under the SBA

PPP Loan Details

Non-seasonal businesses are eligible for is the lesser of:

- the average monthly payroll costs during the year prior to making the loan x 2.5; or
- \$10 million

PPP Loan Characteristics

- Nonrecourse
- No personal guarantee
- No prepayment fees
- No annual fees
- Loan payment deferred for 6 months

PPP Loan Forgiveness

Loan proceeds spent on eligible expenses in the 8 weeks following funding are forgiven

PPP Loan Forgiveness: Eligible Expenses

Eligible expenses include payroll costs, interest on secured debt, rent, and utilities.

- 75% of loan proceeds used on eligible expenses must be used for payroll costs for those loan proceeds to be eligible for forgiveness
- amounts forgiven are excluded from federal gross income of the borrower

PPP Loan Forgiveness: Payroll Expense Inclusions

Payroll costs include:

- Salary, wages, commissions, or similar compensation (including the employee's share of federal payroll taxes);
- Tips;
- Vacation, parental, family, medical, or sick leave;
- Allowance for dismissal or separation;
- Group health care benefits premiums;
- Retirement benefits; and
- State or local tax assessed on the compensation of employees.

PPP Loan Forgiveness: Payroll Expense Exclusions

Payroll costs do not include

- Employees who make more than \$100,000 of cash compensation are capped at \$100,000 for the purpose of calculating payroll costs)
- The borrower's share of federal payroll taxes;
- Qualified sick leave or family leave wages for which credit is allowed under the Families First Coronavirus Response Act (which provides for, among other things, 14-day paid leave for American workers affected by the pandemic); or
- Payments made to independent contractors.

PPP Loan Forgiveness: Payroll Expense Inclusion

Mortgage Interest (Real Estate & Other Secured Credit) is included if mortgage:

- was first incurred prior to February 15, 2020.
- Is on real *or* personal property and
- Is the borrower's liability;

However, to be forgivable, loan proceeds may not be used to prepay or make any principal payments on the mortgage obligation

PPP Loan Forgiveness: Rent and Utilities

Rent payments during the 8 week period are forgiven:

- Proceeds used to pay for rent owed under a lease agreement in force prior to February 15, 2020

Utilities

- Electricity, gas, water, transportation, telephone, or internet access
- For service beginning prior to February 15, 2020.

PPP Loan Forgiveness: Salary Reduction

Forgiveness is reduced if the borrower during the 8-week period following funding:

- Reduces the number of full-time equivalent employees ("FTEs"); or
- Reduces an employee's salary or wages by more than 25% compared to employee's earnings during the most recent full quarter during which the employee was employed before the 8 weeks.
 - ❑ This limit applies to any employee who didn't receive wages or salary of more than \$100,000 annualized during any single pay period during 2019.

PPP Loan Forgiveness: FTE Reduction

For non-seasonal borrowers, the forgiveness reduction due to a reduction of FTEs is calculated as:

- Amounts used for eligible expenses, multiplied by:
- Average number of FTEs per month employed by the borrower during the 8-week period, *divided by*, at the borrower's election, either:
 - Average number of FTEs employed per month during the period between February 15, 2019, through June 30, 2019; or
 - Average number of FTEs employed per month during the period between January 1, 2020, through February 29, 2020.

PPP Loan Forgiveness: Rehire Exemption

If borrower fails the FTE or Salary Reduction test and forgiveness is reduced, proceeds become re-eligible for forgiveness if:

- Borrower eliminates the reduction in the number of FTEs by June 30, 2020; or
- Borrower eliminates the reduction in salary or wages of employees by June 30, 2020.

PPP Loan Forgiveness: Forgiveness Application

Borrowers will "apply" to lenders originating the loan for forgiveness, each of whom will have their own specific process.

Documents that all lenders will require from borrowers include:

- Payroll tax filings reported to the IRS(for the 8-weeks);
- Prior year state income, payroll, and unemployment insurance filings;
- Evidence of the payment of eligible expenses, like cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on eligible mortgage interest payments, rent, and utility payments;
- Certifications that: (i) documentation provided is true and correct; and (ii) amount for which forgiveness is requested was used to retain employees, make interest payments on eligible mortgage interest, rent, or utilities; and
- Any other documentation the SBA deems necessary.

The lender is required to issue a decision within 60 days after receiving an application for forgiveness.

PPP Loan Forgiveness: Forgiveness

What if the is not forgiven?

- Loan portions that are not forgiven have a term of 2 years and an interest rate of 1%.
- There is no pre-payment penalty.

PPP Loan Forgiveness: Proactive Steps

SBA has not yet issued specific guidance on loan forgiveness (including an application deadline), but borrowers can take the following steps to maximize their chances of loan forgiveness:

- Document fund use and allocation by keeping cancelled checks, payment receipts, and transcripts of accounts
- Consider separating PPP loan proceeds from other funds and putting other accounting controls in place
- If there has been any reduction in FTEs or employee salaries or wages, strategize now to ensure elimination of the reduction by June 30, 2020
- Calculate your total eligible expenses in the first 8-weeks (the potential forgivable amount). After the proceeds hit your bank account, spend as much as you can on eligible expenses, but not more than 25% of your anticipated forgivable amount on non-payroll expenses.

Questions?

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