

# PAYCHECK PROTECTION PROGRAM

On Friday, March 27, the Coronavirus Aid, Relief and Economic Security (CARES) Act was signed into law, providing an unprecedented level of emergency assistance for families and businesses affected by COVID 19.

The intent behind the legislation was to get as much money as possible into the hands of the public and business owners as quickly as possible to help provide much needed financial relief. The law encompasses a number of provisions for different effects:

- Direct deposits (or checks) will be provided to individuals within the next three weeks
- Credit and foreclosure protections
- Relaxation of certain tax laws, tax payments and tax deductions
- Source of lending to certain municipalities and large industries
- Small business loans administered

The actual effects to individuals and business owners is unprecedented not only by the size of the financial impact of the law, nearly \$2 trillion, but the 'no strings attached' and expedited way in which the federal government is seeking to get this money out the door.

## Paycheck Protection Program

While there is a lot to learn about the full law, we wanted to begin by providing you a description of a new loan program that will be administered through the SBA and your local banker, called the Paycheck Protection Program (PPP). We believe this is something you should consider carefully and quickly.

Some highlights:

- This program will provide \$349 billion in loans to eligible entities;
- The loans will be forgivable depending on:
  - How you spend the proceeds and;
  - Whether you have or plan to have reduced your staffing and whether you will increase your staffing backing to your previous levels;
- The loans will require no personal guarantees;
- The proceeds are intended to help you pay
  - Employee compensation;
  - Rent and utilities;
  - Interest on debt that was in existence prior to February 15, 2020.

## Eligibility

Eligible entities are generally those with less than 500 employees, including the following:

- Private businesses;
- Nonprofit organizations;
- Veterans organizations;
- Certain tribal business concerns;
- Eligible self-employed individuals;
- Independent contractors;
- Sole proprietorships;
- Businesses in the “Accommodation and Food Services” industry (NAICS 72) that have less than 500 employees per physical location;
- Have been in operation on February 15, 2020;
- Had employees for whom the borrower paid salaries and payroll taxes; or
- Paid independent contractors, as reported on a Form 1099-MISC.

For the purposes of determining the 500-employee threshold, applicants should include full time, part-time and other basis employees. Generally, SBA affiliations apply except such rules are waived with respect to:

- Businesses in the “Accommodation and Food Services” industry (NAICS 72),
- Franchises assigned a franchise identifier code
- Any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958.

## Maximum Loan Amount

The maximum loan amount will be equal to the average monthly payroll expenses for the previous year preceding the date of the loan times 2 ½. If any Emergency Disaster loan is in place or in process since January 31, these can potentially be added and refinanced. The maximum total loan size is \$10 million.

For seasonal employers, they may choose to calculate the average monthly payroll costs based on the 12-week period starting February 15, 2019 or the period starting March 1, 2019 through June 30, 2019.

For employers not in business between February 15, 2019 and July 30, 2019, the average monthly payroll cost is calculated based on the period beginning January 1, 2020 through February 29, 2020.

**Payroll costs** as defined in the Small Business Act include:

- Employee compensation (e.g., salary, wages, commissions, cash or equivalents);
- Cash tips;
- Payment for vacation, parental, family, medical or sick leave;
- Allowance for dismissal or separation (severance);
- Payment for group health benefits, including insurance premiums (presumably including all COBRA benefits);

- Payment for any retirement benefit;
- Any State or local taxes assessed on the compensation of employees; and,
- The sum of any compensation paid to a sole proprietor or independent contractor (i) that is a wage, commission, income net earnings from self-employment or similar compensation and (ii) that does not exceed \$100,000 in one year, prorated for the covered period.

Payroll costs exclude:

- Compensation of an individual person in excess of \$100,000 (as prorated for the period);
- Federal employment taxes imposed or withheld taxes;
- Compensation to an employee whose principal residence is outside of the U.S.; and,
- Qualified sick leave for which a credit is allowed under Section 7001 of the Families First Coronavirus Response Act.

## Terms

Loans are available for up to a 10-year term (amortized) at 4 percent interest, with six months (and up to one year) deferral of principal and interest payments. Notably, certain SBA requirements are waived.

Loans are available with:

- No personal guaranties of shareholders, members or partners
- No collateral
- No proving recipient cannot obtain funds elsewhere
- No SBA fees (may still have to pay lender processing fee)
- No prepayment fee

## Allowable Uses of Covered Loans

- Payroll costs as defined above by Small Business Act;
- Payments of interest on any pre-existing debt or mortgage obligation (but not payment or prepayment of principal on such obligations);
- Rent (including rent under an equipment or other lease); and,
- Utilities.

Payroll costs would not include:

- Individual employee compensation above \$100,000 per year (prorated for the covered period);
- Certain federal taxes;
- Compensation to employees whose principal place of residence is outside of the US;
- Sick and family leave wages for which credit is allowed under the Families First Coronavirus Response Act.

## Application Process

Eligible entities may file applications with an SBA-approved lender. The law indicates that within 30 days they will have guidance and paperwork provided to lenders. Lenders have been delegated authority to make loans without SBA review.

Applicants will need to provide personal certification of the following:

- 1) That the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
- 2) That funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- 3) That the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and,
- 4) During the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

## Loan Forgiveness

The forgiven amount will be equal to the amount actually paid for payroll costs, salaries, tips, benefits, rent, utilities and mortgage interest during the eight weeks following disbursement of the loan.

The forgiveness amount is subject to reduction if there is a workforce reduction or a reduction in the salary or wages of an employee:

- The amount attributable to a workforce reduction will be equal to the initial forgiven amount multiplied by the quotient of average full time employees (FTEs) during the eight-week period divided by the average FTEs for the period from February 15, 2019 through June 30, 2019 or January 1, 2020 through February 29, 2020, as determined by the recipient.
- The amount attributable to a salary or wage reduction will be the amount of any salary or wage decrease in excess of 25 percent of the total salary or wages during the most recent full quarter such employee was employed before the eight-week period. Only employees who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in excess of \$100,000 are included in this calculation.

Reductions in workforce, salaries and wages that occur from February 15, 2020 to April 26, 2020 will be disregarded for purposes of reducing the forgiveness amount so long as the reductions are eliminated, i.e. employees are rehired or new employees are hired to replace the reductions by June 30, 2020.

Even though allowable as a use of the funds, please note that “payments of interest on any pre-existing debt or mortgage obligation” are not eligible to be included in the forgiveness calculation.

Borrowers must apply for forgiveness with the lender servicing the loan. Lenders have 60 days to review and make a determination. Any portion of the loan that is forgiven will be excluded from gross income

## What to do next

**Lenders will be receiving guidance and paperwork in the next 30 days and, therefore, will not be able to process these loans until then. However, we recommend that you take quick action so that you can get on your lenders radar. Given the amount of funding for this option, we believe it is likely that the funds could be fully committed in a short period of time. Therefore, our recommendations are that you:**

- 1) Contact your local SBA Lender and let them know you are interested. If you don't have a current banking relationship, please let us know and we can make an introduction;**
- 2) Pull your affected financial records. You will want a summary of compensation, rent and utilities;**
  - **12-month historical compensation summary from probably March 30, 2020 back to April 1, 2019.**
  - **Current compensation summary of most recent month.**
  - **These summaries would include a summary of the following:**
    - **Employee compensation (e.g., salary, wages, commissions, cash or equivalents);**
    - **Cash tips;**
    - **Payment for vacation, parental, family, medical or sick leave;**
    - **Allowance for dismissal or separation (severance);**
    - **Payment for group health benefits, including insurance premiums (presumably including all COBRA benefits);**
    - **Payment for any retirement benefit;**
    - **Any State or local taxes assessed on the compensation of employees; and,**
    - **The sum of any compensation paid to a sole proprietor or independent contractor (i) that is a wage, commission, income net earnings from self-employment or similar compensation and (ii) that does not exceed \$100,000 in one year, prorated for the covered period.**
  - **Payroll costs exclude:**
    - **Compensation of an individual person in excess of \$100,000 (as prorated for the period);**
    - **Federal employment taxes imposed or withheld taxes;**
    - **Compensation to an employee whose principal residence is outside of the U.S.**
- 3) Create your personal certification to include the following;**
  - **The uncertainty of current economic conditions makes necessary the loan request to support our ongoing operations;**

- Funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- We do not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and,
- During the period beginning on February 15, 2020 and ending on December 31, 2020, we have not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

**Our suggestion is to put these on letterhead and have the principals sign the letter.**

- 4) **Review your staffing plan and identify any changes that have been made to date, i.e. reduced hours, reduced pay, layoffs, furlough etc. Part of the incentive in the law was to promote remaining at full staff. Reductions in staffing or pay versus the previous 12 months, could result in a deduction in the full forgiveness of the loan. Once you have this information, we can help you with a formula. With that, you will be able to then determine your strategy for staffing moving forward.**
- 5) **Analyze your loan strategy based on all the information above.**
- 6) **If you have additional questions or would like help in thinking through this unprecedented process, please let us know and we will work to help you.**



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