

Guide to the COVID-19 Paycheck Protection

COVID-19 Response Resource Center: Timely Counsel for your Business

By Steven LaSota and Susan Young on 03.27.2020

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The Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, has been passed by Congress and awaits signature by the President. The CARES Act includes the much anticipated Paycheck Protection Program (PPP), establishing the guidelines for a new category of loans guaranteed by the Small Business Administration (or SBA) that will soon be available to certain eligible businesses. The loans are intended to provide borrowers much-needed liquidity during these uncertain times, and, notably, the principal amounts borrowed under the PPP may be entirely forgiven under certain circumstances. The highlights of the Paycheck Payroll Protection Program are set forth below. We anticipate additional guidance will be issued to help lenders, borrowers and practitioners navigate this new program.

Who is offering the loans? Currently-authorized SBA lenders are qualified to offer PPP loans. The CARES Act further expands the SBA's authority to approve a broader-range of financial services providers to issue PPP loans, but it remains to be seen how quickly these alternative loan providers will be a meaningful source of PPP loans.

Who is eligible? In general, all small business concerns (as defined by the SBA), sole proprietors, independent contractors and eligible self-employed individuals are eligible to receive a covered loan. In addition, any business concern, 501(c)(3) or 501(a) nonprofit organization, or veterans organization with not more than 500 employees or the applicable size standard as set by the SBA, if higher, are eligible to receive a covered loan. Applicants in the accommodations and food services sectors with not more than 500 employees per physical location are also eligible for a covered loan.

In determining the eligibility of a borrower for a loan under the PPP, a lender shall consider whether the applicant was in operation on February 15, 2020 and had employees for whom the applicant paid salaries and payroll taxes or paid independent contractors as reported on a Form 1099-MISC. In addition to other certifications, applicants will be required to make a good faith certification that the uncertainty of the current economic conditions makes the loan necessary to support its ongoing operations and acknowledge that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments and utility payments.

How much am I eligible to receive? Loan amounts for qualified borrowers are calculated based on a factor that is intended to provide funding for 2.5 months of eligible payroll costs, plus additional amounts to refinance any loans taken out under the SBA's economic injury disaster program between January 31, 2020 and the date on which a covered loan is made available. The maximum amount available is \$10 million. Eligible payroll costs do not include compensation of an individual employee in excess of an annual salary of

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\$100,000 as prorated for the covered period.

What are the financing terms? Loans issued under the PPP are (i) unsecured, (ii) not subject to personal guarantees (but may be subject to recourse if the proceeds are used for an unauthorized purpose) or pre-payment penalties, and (iii) accrue interest at a rate not to exceed 4%. Payments of principal, interest and fees will be subject to deferral for a period of not less than six months and not more than one year. Amounts that are not forgiven under the loan forgiveness provisions of the CARES Act will have a term of up to 10 years from the date the borrower applies for loan forgiveness.

What can the money be used for? Allowable uses for the funds may include, in addition to the allowable uses for a loan issued under Section 7(a), eligible payroll costs as well as costs related to continuation of health care benefits during periods of sick, medical or family leave, and insurance premiums; payments of interest on any mortgage obligation (but not for payments of principal); rent; utilities; and interest on any other debt obligations that were incurred before February 15, 2020.

What amounts may be forgiven? Borrowers who receive a loan under the PPP are eligible for forgiveness of a portion of the loan equal to amounts incurred and payments made during the eight-week period beginning on the date the loan (the “covered period”) for eligible payroll costs; payments of interest on mortgage obligations incurred before February 15, 2020; payments for rent under a lease entered into before February 15, 2020; and payments for utilities for which service began before February 15, 2020. As mentioned above, eligible payroll costs do not include compensation of an individual employee in excess of an annual salary of \$100,000 as prorated for the covered period.

Are there limits or reductions on amounts eligible for forgiveness? Yes. The amount of loan forgiveness may not exceed the principal amount of the loan. In addition, the amount of loan forgiveness will be reduced if there is an employee headcount reduction or a salary reduction in excess of 25% during the 8-week covered period as compared to prior periods. In an effort to acknowledge the fast-paced realities of the current circumstances, if a Borrower “reverses” any headcount or salary reductions prior to June 30, 2020, the Borrower’s eligibility for loan forgiveness may be preserved. Borrowers will be required to provide additional documentation to substantiate their eligibility for loan forgiveness.

Will the amounts forgiven be taxable? No, amounts forgiven will be excluded from gross income for Federal income tax purposes.

If you have questions about this legislation, please contact Sue Young, Iain MacSween or Steve LaSota, linked below.

Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our COVID-19 Response Resources page.

Tags: CARES Act, Payroll Protection Program Loans, Small Business Administration