

Understanding How the Paycheck Protection Loan Program Can Provide Support For Your Business

March 31, 2020

On Friday, March 27, 2020, The Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), a \$2 trillion stimulus bill, was signed into law. The CARES Act allocated approximately \$350 billion to help small businesses keep workers employed and cover certain expenses while dealing with the impact the pandemic has had on the United States’ economy and its citizens’ health. The CARES Act established the Paycheck Protection Program (“PPP”) that enables qualifying small businesses to borrow up to \$10 million. These loans are eligible to be forgiven, if the loan proceeds are used pursuant to criteria as defined in the CARES Act, and other requirements are met. Loans are available to eligible borrowers under this program through June 30, 2020. The CARES Act requires the Small Business Association (SBA) to draft regulations around implementation including a list of lenders regarding these loans. In addition, businesses who have taken out SBA Economic Injury Disaster Loans have further considerations as discussed below.

Eligibility for PPP Loans

The following organizations (“Small Businesses”) are eligible for a PPP Loan:

- Businesses with 500 or fewer employees
- A business that meets the SBA’s size standard (certain industries may have a higher cap on the number of employees in order to qualify as a small business) [See link](#) to SBA.gov for Small Business Size Standards Chart.
- Section 501(c)(3) qualifying nonprofit organizations
- Sole proprietorships
- Independent contractors
- Self-employed individuals
- Tribal business concerns that meet the SBA Size standard
- 501(c)(19) Veterans Organizations that meet the SBA size standard

The CARE Act waives the SBA affiliation requirement for the following applicants:

1. Accommodation and Food Services sector businesses (i.e., NAICS Code beginning with 72) with no more than 500 employees;
2. Franchises with codes assigned by the SBA as reflected on the SBA franchise registry; and
3. Businesses that receive financial assistance from one or more small business investment companies (SBIC).

The PPP Loan Process

PPP Loans will be provided by lenders who are currently approved as SBA 7(a) lenders or who are approved by the SBA and the Treasury Department to become PPP lenders. PPP lenders are delegated authority to make and approve PPP loans without additional SBA approval. PPP loans are backed by a 100% guaranty from the SBA. Borrower and lender fees are waived. PPP lenders will be required to consider whether an applicant was in operation on February 15, 2020, and either paid employees' salaries and payroll taxes and/or paid independent contractors as of that date.

Lenders will ask for a good faith certification from the borrower that:

1. The loan request is necessary to support ongoing operations due to the uncertainty of current economic conditions;
2. The borrower will use the loan proceeds to retain workers and maintain payroll and/or make mortgage interest, lease, and utility payments;
3. The borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here; and
4. From February 15, 2020 to December 31, 2020, the borrower has not received a loan that is duplicative of the purpose and amounts applied here.

Note: Borrowers may be able to fold emergency loans made between January 31, 2020 and the date this loan program become available into the new PPP loan.

Unlike Prior SBA Economic Injury Disaster Loans, Lenders Will Not Require the Following from the Borrower:

1. Borrower does not have to demonstrate that credit is unavailable elsewhere;
2. Borrower does not have to demonstrate repayment ability;
3. A personal guarantee is not required; and
4. Collateral is not required.

Note: There will be no recourse to owners of borrowers for non-repayment, except to the extent proceeds were used for an unauthorized purpose.

Details and Terms of a PPP Loan

The CARES Act increased the maximum availability of 7(a) loans (which includes PPP loans) to \$349 Billion. The loans will have a maximum maturity of 10 years and an interest rate not to exceed 4%. Proceeds from the PPP loans may be used to cover **“Payroll Costs”** (excluding the prorated portion of any compensation above \$100,000 per year for any person), group healthcare benefit costs and insurance premiums, mortgage interest payments (excluding prepayments or principal), rent, utilities, and interest on debt that existed as of February 15, 2020.

PPP loans are limited to the lesser of:

- \$10 million, or
- Borrower’s average monthly **“Payroll Costs”** multiplied by 2.5 (Method of calculation for Payroll Costs and definition of types of costs are provided below), plus
- Any disaster loan (discussed below - [see link to previous alert](#)) taken out after January 31, 2020 that has been refinanced into a paycheck protection loan

Maximum Loan Calculation for:

Employer Type	Multiplier	Monthly Payroll Costs
Non-Seasonal Employers	2.5 X	Average total monthly “Payroll Costs” incurred during the one-year prior to the loan date

Non-Seasonal Employers not operational in 2019	2.5 X	Average total monthly payroll costs incurred for January and February 2020
Seasonal Employers	2.5 X	Average total monthly payments for payroll costs for the 12-week period beginning February 15, 2019 or March 1, 2019 (decided by the borrower) and ending June 30, 2019

“Payroll Costs” are comprised of the following payments:

1. wages, commissions, salary, or similar compensation to an employee or independent contractor;
2. cash tip or equivalent;
3. vacation, parental, family, medical or sick leave;
4. allowance for dismissal or separation;
5. group health care benefits, including insurance premiums;
6. any retirement benefits; and
7. [state or local tax](#) assessed on the compensation of employees.

“Payroll Costs” do **not** include the following:

1. compensation of any individual employee in **excess** of an annual salary of \$100,000 as prorated for the period February 15 to June 30, 2020;

Note: This limitation also applies to Sole proprietors, independent contractors and self-employed individuals.

2. federal payroll taxes, railroad retirement taxes, and income taxes;
3. any compensation of an employee whose principal place of residence is outside the U.S.;
4. qualified sick leave wages for which a credit is allowed under section 7001

- of the Families First Coronavirus Response Act (“FFCRA”); or
5. qualified family leave wages for which a credit is allowed under section 7003 of the FFCRA. The FFCRA was passed on March 18, 2020.

Loan Extension and Forgiveness

The CARES Act provides for possible deferment of repayment of PPP loans for a period of at least six months, but not to exceed a year. The SBA is directed to issue guidance on the terms of this deferral within 30 days.

Another Section of the CARES Act allows for forgiveness of PPP loans on a tax-free basis for Federal purposes (states have not yet announced if they will follow or decouple). A borrower is eligible for loan forgiveness equal to the sum of the following payments made by the borrower during the 8-week period beginning on the date of the loan:

- (i) Payroll Costs (as defined above);
- (ii) Mortgage interest;
- (iii) Rent on a leasing agreement; and
- (iv) Utility payments (electricity, gas, water, transportation, telephone, and/or internet)

The amount of calculated loan forgiveness will be reduced if there is a reduction in the number of employees, or a reduction of greater than 25% in wages paid to employees, during the 8-week covered period when compared to other periods in either 2019 or 2020. Reductions are calculated as follows:

Forgiveness Based on Reduced # of Employees

Option 1:	Qualified Spend	x	FTEs*	÷	Average number of FTEs per month from February 15, 2019 to June 30, 2019
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Option 2:	Qualified Spend	x	FTEs	÷	Average number of FTEs per month from January 1, 2020 to February 29, 2020
Option 3: (for seasonal employers)	Qualified Spend	x	FTEs	÷	Average number of FTEs per month from February 15, 2019 to June 30, 2019

*FTEs are Full-Time Equivalent Employees per month for the 8-weeks beginning on loan origination.

Forgiveness Based on Reduction in Salaries

Qualified Spend	-	For each employee that did not earn annualized wages during 2019 of more than \$100,000, the amount of any reduction in annualized wages that is greater than 25% compared to their most recent full quarter they were employed before the covered period.
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Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after the enactment of the CARES Act (April 26, 2020) shall not reduce the amount of loan forgiveness **if** by June 30, 2020, the borrower eliminates the reduction in employees or reduction in wages.

Application Requirements for Loan Forgiveness

When applying for forgiveness of certain loan amounts, a borrower must submit to the lender an application that includes:

1. Documentation verifying the number of FTE employees on payroll and pay rates, including:
2. payroll tax filings submitted to the IRS; and

3. state income, payroll, and unemployment insurance filings;
4. Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and/or covered utility payments.
5. Certification from an authorized representative of the borrower that:
6. the documentation presented is true and correct; and
7. the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered lease obligation, or make covered utility payments; and
8. any other documentation the SBA determines necessary.

Lenders have 60 days from the date of receiving an application for loan forgiveness to render a decision.

Emergency EIDL Grants

The CARES Act provides \$10 billion to allow eligible borrowers to request an emergency advance of up to \$10,000 to be paid within 3 days of the SBA receiving an EIDL application loan application. The applicant must certify under penalty of perjury that they are an eligible entity and must use the advance for a qualified EIDL purpose including:

1. Providing paid sick leave to employees unable to work due to the direct effect of the COVID-19;
2. Maintaining payroll to retain employees during business disruptions or substantial slowdowns;
3. Meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains;
4. Making rent or mortgage payments; and
5. Repaying obligations that cannot be met due to revenue losses.

An applicant is not required to repay the advance even if they are subsequently denied a loan.

Subsidy for Certain Loan Payments

The CARES Act provides \$17 billion to subsidize certain payments due on covered loans (includes certain loans guaranteed by the SBA), as defined in the CARES Act. The SBA shall pay the principal, interest, and any associated fees that are owed on a covered loan in a regular servicing status:

1. For the 6-month period beginning with the next payment due on a covered loan made before the enactment of the CARES Act that is not currently on deferment;
2. For the 6-month period beginning with the next payment due on a covered loan after the deferment period, if the covered loan was made before the enactment of the CARES Act and is already on deferment; and
3. For the 6-month period beginning with the first payment due on a covered loan made during the period beginning on the date of enactment of the CARES Act and ending 6 months later.

The SBA will also encourage lenders to provide payment deferments, when appropriate, and to extend maturity dates, so that the deferments do not create a balloon payment or increase in debt payments.

Next Steps

More information regarding PPP Loans should be issued by the SBA in the coming week or two. Visit [sba.gov](https://www.sba.gov) for updates and contact your Anchin Relationship Partner for guidance on these and the other forms of relief described above.

Disclaimer: Please note this is based on the information that is currently available and is subject to change.