

CARES Act Paycheck Protection Program

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SBA Loans Available with Particularly Attractive Terms for Businesses Maintaining Their Payroll

With the enactment of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, all businesses should be evaluating the availability of resources to address challenges associated with COVID-19.

One objective of the CARES Act is keeping American workers paid and employed, despite the economic conditions caused by COVID-19. The Paycheck Protection Program allocates almost \$350 billion to support emergency loans to qualifying businesses. Through the Paycheck Protection Program, the Small Business Administration (“SBA”) has the authority to provide 100% federally backed loans through December 31, 2020 to help eligible businesses pay operational costs such as payroll, rent, and utilities. If a business satisfies certain conditions, portions of the loans are forgivable.

This *Legal Update* provides an overview of the Paycheck Protection Program.

Eligibility Threshold

Businesses (including, sole-proprietors, independent contractors, and other self-employed individuals) with fewer than 500 employees are eligible for the Paycheck Protection Program. The 500-employee threshold includes all employees, including full-time, part-time and any other status. There are some limited exceptions to the 500-employee eligibility requirement for certain industries, such as businesses in the hospitality and food sectors that have multiple locations, which can have up to 500 employees per physical location of the business. In addition to this basic eligibility threshold, a lender providing a loan under the Paycheck Protection Program is required to consider whether the business: (i) was in operation on February 15, 2020, and (ii) had employees or independent contractors for whom the business had paid salaries, compensation and payroll taxes.

Covered Period

Throughout the Paycheck Protection Program, the term “Covered Period” is used. Covered Period is defined as the period from February 15, 2020 and ending on June 30, 2020.

Maximum Loan Amount Available

During the Covered Period, an eligible business's maximum loan amount is based upon the business's average total monthly payroll costs incurred during the one-year period before the date of the loan. An adjustment to this one-year period is available for businesses with a seasonal workforce. During the Covered Period, each eligible business may receive up to 2.5 times its average monthly payroll costs subject to a \$10 million limitation. Certain payroll costs are excluded in calculating the maximum loan amount, including:

- individual employee compensation over \$100,000;
- payroll and income taxes;
- compensation for an employee with a principal place of residence outside the United States; and
- qualified sick leave or family leave wages for which a business will receive a credit under the Families First Coronavirus Response Act.

Allowable Uses of Loan Funds

During the Covered Period, an eligible business can use the funds obtained through the Paycheck Protection Program for the following categories:

- payroll costs;
- cost related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- employee salaries;
- interest payments on any mortgage;
- rent and utility payments; and
- interest payments on any other debt obligations that were incurred before February 15, 2020.

Loan Forgiveness

Businesses receiving a loan through the Paycheck Protection Program are eligible for loan forgiveness. The amount of forgiveness cannot exceed the principal amount of the loan, but may equal up to a business's costs during the 8 weeks following the date of the loan's origination for the following categories:

- Payroll costs;
- Interest on real or personal property mortgage obligations in existence before February 15, 2020 and incurred in the ordinary course;
- Rent under a lease agreement in force before February 15, 2020; and
- Utility payments, including electricity, gas, water, transportation, telephone or internet, for which service began before February 15, 2020.

The amount of loan forgiveness is subject to reduction based on a business's decline in headcount or wages. Declines in headcount or wages between February 15, 2020 and April 26, 2020 will not trigger a reduction in loan forgiveness if the business reverses the decline and returns to pre-decline levels by June 30, 2020. Loan forgiveness will not be included in a business's taxable income.

Other Key Features of Loans Obtained through the Paycheck Protection Program

- **No Collateral or Personal Guarantee.** Unlike the typical approach to collateral and personal guarantees with SBA loans, collateral and a personal guarantee are not required for a loan obtained through the Paycheck Protection Program, except if the funds are used for non-allowable uses.
- **Loan Fees.** Typical SBA loan fees are waived for a loan obtained through the Paycheck Protection Program.
- **Deferral of Payments.** Payments of principal and interest on a loan obtained through the Paycheck Protection Program are deferred for a period of six months to one year.
- **Lack of Prepayment Penalties.** A loan obtained through the Paycheck Protection Program is not subject to a prepayment penalty.
- **Maximum Rate and Term.** The maximum rate of interest that can be charged for a loan obtained through the Paycheck Protection Program is four percent. The maximum term of a loan obtained through the Paycheck Protection Program is ten years from the date on which the business applies for loan forgiveness.
- **Coordination with Other Federal Support.** If the business has obtained an Economic Disaster Injury Loan, the business cannot obtain a loan under the Paycheck Protection Program for the same purpose.
- **Payroll Tax Credits and Payment Deferrals.** A business obtaining a loan through the Paycheck Protection Program will not be able to use the payroll tax credits available under the Families First Coronavirus Act for employee retention or the deferral of employer-side social security payroll taxes under the CARES Act.

Good Faith Certification

To participate in the Paycheck Protection Program, a business is required to certify:

1. That the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
2. Acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
3. That the business does not have a SBA (7)(a) loan pending for the same purpose and duplicative of amounts applied for or received under a covered loan;
4. During the period beginning on February 15, 2020 and ending on December 31, 2020, the business has not received amounts under the Paycheck Protection Program for the same purpose or duplicative amounts applied for or received under a covered loan.

Timing

The SBA will be providing additional guidance to lenders and borrowers in the days ahead. We anticipate it may take a couple weeks before applications can be processed.

The CARES Act and previous legislation enacted in response to COVID-19 contain various loan programs and tax credit provisions. Careful planning should be done to determine which programs are most advantageous for your business.

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