



CARES ACT RELIEF PROGRAMS AND QUALIFICATIONS AND APPLICATIONS PROCEDURES

On Friday, March 27, 2020, President Trump signed a \$2 trillion stimulus package – the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). The purpose of the CARES Act is to assist businesses with immediate needs to allow them to retain their employees and cash flow, among other things.

The CARES Act is primarily comprised of three (3) relief programs: (1) the Paycheck Protection Program, (2) the Small Business Debt Relief Program and (3) Economic Injury Disaster Loans and Emergency Economic Injury Grants.

On or about April 1, 2020, the Treasury Department has issued guidelines regarding the requirements and components applicable to the Paycheck Protection Program Loans (“PPP Loans”), which guidelines are incorporated into this publication. Substantive changes to the PPP Loan Program as set forth in the Treasury guidelines are highlighted in yellow. Please be advised that the situation is still evolving with respect to the relief programs addressed in this publication, and that the information included herein is subject to change.

The Paycheck Protection Program

One of the most significant facets of the CARES Act is the small business loan program - the Paycheck Protection Program (“PPP”). Through the PPP, \$350 billion will be distributed to small businesses in the form of loans that may be partially forgiven if the recipient companies meet certain requirements. Generally, in order to be eligible for a PPP loan a business needs to have been in operation on February 15, 2019, be harmed due to COVID-19 between February 15, 2020, and June 30, 2020 (economic uncertainty qualifies as “harm”), and be a small business, i.e., 500 or less employees. Additionally, individuals who operate sole proprietorships or as an independent contractor, as well as self-employed individuals may be eligible.

A PPP loan could forgive up to eight (8) weeks of payroll based on employee retention and salary levels, would have no SBA fees and at least six (6) months of deferral with maximum deferrals of up to one (1) year. PPP loan proceeds may be utilized for: payroll; costs associated with the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums; employee salaries, commissions or similar compensation; payments of interest on any mortgage obligation; rent; utilities or interest on any debt obligations that were incurred before February 15, 2020.

Employee or owner compensation over \$100,000 is not covered by the PPP loan. Additionally, taxes imposed under chapters 21, 22 and 24 of the Internal Revenue Code, compensation of employees whose principal place of residence is outside the United States and qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (“FFCRA”) are not covered.

The size of the PPP loan is determined by when you were in operation. Generally, for businesses in operation between February 15, 2019 and June 30, 2019, the maximum loan is equal to 250% of your average monthly payroll costs during that time period. For businesses not in operation between February 15, 2019 and June 30, 2019, the maximum loan you would be entitled to is equal to 250% of your average monthly payroll costs between January 1, 2020, and February 29, 2020. Businesses that have already taken out, or plan to take out, an Economic Injury Disaster Loan (“EIDL”^[1]) between February 15, 2020, and June 30, 2020, are able to refinance the EIDL utilizing a PPP loan with the addition of the outstanding loan amount to the payroll sum.

In order to obtain forgiveness of the loan, a business must apply through their lender for loan forgiveness and provide documentation that verifies payroll information, mortgage, lease and/or utility obligations and certifies that the funds are being used in accordance with the PPP. Any amount not forgiven is carried forward with a maximum loan term of ten (10) years, at a maximum interest rate of four percent (4%).

PPP Qualifications and Application Procedures

Which businesses qualify?

- *Must have been in operation as of February 15, 2019*
- *Must have been affected by COVID-19 related events, including economic uncertainty*
- *Must have five hundred (500) employees or less or be in an industry that uses an employee-based size standard*
- *Includes:*
 - *For-profit businesses, including most franchises*
 - *Sole proprietorships, independent contractors, gig economy workers and other self-employed individuals*
 - *Tribal businesses*
 - *Veterans organizations*
 - *Nonprofit Organizations (generally 501(c)(3) charitable organizations and 501(c)(19) veterans organizations)*

^[1] An Economic Injury Disaster Loan are lower interest rate loans of up to \$2 million, with principal and interest deferment, that are used for expenses that could have been met had COVID-19 note occurred. These expenses include payroll and other operating expenses.

What can the PPP Loan be used for?

- Payroll, including salary, hourly wages, commission payments and cash tips, where applicable (employee/owner compensation over \$100,000 is excluded)
 - It is unclear at this time whether wages to part-time employees and independent contractor payments will be covered
- Payment for vacation, parental, family medical and sick leave
- Severance payments
- Costs related to group health care benefits, including insurance premiums
- Payment of retirements benefits
- Payment of payroll taxes
- Interest on mortgage obligations incurred before February 15, 2020
- Rent on lease agreements in effect before February 15, 2020
- Utilities
- Interest on debts that were incurred before February 15, 2020

How much can a business borrow?

- Two and one-half times (2.5x) the business' average monthly payroll for 2019, for a maximum of \$10 million
 - For a business that was not in business during the entire February 15, 2019 through June 30, 2019 time period, the maximum loan amount is 250% of the average monthly payroll costs between January 1, 2020 and February 29, 2020;
 - For seasonal businesses, you may elect to base your Average Monthly Payroll on the period between February 15, 2019 and June 30, 2019
- A PPP Loan may be forgiven in its entirety if the following conditions are met:
 - At least seventy-five percent (75%) of the loan funds are used for qualifying expenses in the eight (8) week-period after the loan is approved
 - PPP Loan may be forgiven if the business retains all of its employees or rehires laid-off employees by June 30, 2020
 - If the business lays off some employees and/or decreases by more than 25% the salary or wages of any employee who made less than \$100,000 in 2019, the forgiveness amount will be proportionately reduced
 - Loan may still be forgiven if the business lays off but then rehires employees by June 30, 2020

- Apply for forgiveness after the eight (8)-week period
 - Lenders are required to make a decision regarding forgiveness within sixty (60) after your request
- *Loans are retroactive to February 15, 2020, so that businesses may rehire workers who were already laid off*
- The terms of all PPP Loans will be the same
 - *Any loan amounts not forgiven are payable over two (2) years, at an interest rate of one-half percent (0.5%)*
 - **Loan payments will be deferred for six (6) months**, but interest will still accrue during the six (6) months
 - No collateral or personal guaranty is required
 - No prepayment fees
 - No requirement to prove that the business cannot obtain funds elsewhere

Where to apply:

- *Any existing SBA lender, or any federally insured depository institution, federally insured credit union, or Farm Credit System institution that is participating in the program. Additional lenders who are approved by the Treasury Department*
- *Therefore, your business may be able to apply at any bank or institution that you already use, or at a nearby bank or institution*
- *How to find approved lenders?*
 - *Inquire with your bank or credit union*
 - *SBA's online Lender Match tool*
 - *Call your local Small Business Development Center or Women's Business Center*
 - *Chase Bank has indicated that its application will be entirely online, and that applicants need a Chase business checking account in order to apply with them; the **application with Chase will be entirely online.***
 - *Research indicates that US Bank, Sunrise Banks, Key Bank and Live Oak Bank are among the approved lenders.*
 - *The 100 most active SBA 7(a) lenders in the U.S. in 2019: <https://www.sba.gov/article/2020/mar/02/100-most-active-sba-7a-lenders>*
- **The SBA has released the Paycheck Protection Program application here:** <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>

Relevant Time Periods:

- *Small business, sole proprietorship and nonprofits: Applications accepted beginning **Friday, April 3***

- *Certain banks are accepting pre-applications*
- *Independent Contractors and Self-Employed Individuals: Applications accepted beginning **Friday, April 10***
- *Deadline to apply: **June 30, 2020***
- *Loans are first come, first served*
 - *The total amount of loan funds available is fixed*

Required and/or Recommended Documents:

- *The application requests documentation of the following information pertaining to the eight (8)-week period following loan approval:*
 - *The number of full-time equivalent employees on payroll*
 - *The dollar amounts of payroll costs*
 - *Mortgage interest payments and rent payments*
 - *Utilities*
- *Although the following categories of documents are not indicated on the Paycheck Protection Program application, your business should nonetheless begin gathering these documents, where applicable, because these categories are addressed in the CARES Act and may be considered allowable expenses for the PPP Loan:*
 - *Payroll Records for part-time employees (it is unclear at this time whether wages to part-time employees will be covered)*
 - *Amounts paid to independent contractors by cash, check, ACH, payment services (Paypal, Venmo, Zelle, etc.) for the last twelve (12) months (it is unclear at this time whether independent contractor payments will be covered)*
 - *EDD documentation*
 - *Documents relating to the costs of group health insurance, retirement benefits and other employee benefits*
 - *Financial statements for 2019 and 2020*
 - *2019 tax returns, if available*

Small Business Debt Relief Program

Another component of the CARES Act is the relief being provided to small businesses with SBA loans. Specifically, 7(a) loans, 504 loans and microloans (collectively, the "SBA Loans"). Under the Small Business Debt Relief Program, the SBA will cover all loan payments on these SBA Loans, including principal, interest and fees, for six (6) months. The same relief is available to borrowers who take out one of the eligible SBA Loans within six (6) months of March 27, 2020.

Purpose

- *A program to assist businesses in making payments on their current or potential SBA loans*
- *Applies to non-PPP SBA loans, particularly 7(a), 504 and microloans*

Which loans qualify?

- *Current SBA loans*
- *New SBA loans issued prior to September 27, 2020*

Which businesses qualify?

- *Generally small businesses under the North American Industry Classification System (“NAICS”) standard*

What does the program cover?

- *The SBA will pay the principal, interest and fees of these loans for up to six (6) months*

How to apply:

- *Contact the bank or lending institution through which your business obtained its existing non-PPP SBA loan or intends to apply for a non-PPP SBA loan*

Economic Injury Disaster Loans and Emergency Economic Injury Grants

As previously stated, EIDLs are lower interest rate loans with loan deferment subject to the discretion of the administrator of the loan. Sole proprietorships, independent contractors, cooperative and employee-owned businesses and tribal small businesses with five hundred (500) or fewer employees are eligible.

Emergency Economic Injury Grants provide an advance of up to \$10,000 to a small business that has applied for an EIDL. The advance must be specifically requested after you apply for an EIDL and is supposed to be available within three (3) days of request. Small businesses and private non-profits harmed by COVID-19 are eligible for the advance if they have been in operation since January 31, 2020.

The advance does not need to be repaid and may be used for payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations including debts, rent and mortgage payments. Additionally, grants are being backdated to January 31, 2020, in order to allow businesses that have already applied for an EIDL to be eligible to receive a grant.

Purpose:

- *Intended to quickly provide a modest amount of cash to cover operating expenses, including payroll, sick leave, increased production costs due to supply chain disruptions and other business obligations such as rent and mortgage*
- *EIDL Loans: Up to \$2 million*
 - *Not eligible for loan forgiveness*
- *EEIG Grants: Emergency cash advance of up to \$10,000*
 - *If a business receives both a PPP Loan and an EEIG Grant, the amount of the EEIG Grant will be deducted from the amount of the PPP Loan that may be forgiven*
- *If the business also applied for the PPP Loan, the EIDL Loan must be used for different expenses*

Which businesses qualify?

- *Small business concerns and small agricultural cooperatives that meet size standards*
- *Most non-profit businesses of any size*
- *Sole proprietorships, with or without employees*
- *Independent contractors*
- *Cooperatives and employee-owned businesses*
- *Tribal small businesses*
- *All categories of applicants must have 500 or fewer employees*
- *Must have been in operation as of January 31, 2020*

How to apply:

- *Unlike the PPP Loans, the EIDL Loans are administered directly by the SBA*
- *Application available online at: <https://covid19relief.sba.gov/#/>*
- *Businesses may apply for both the EIDL Loan and EEIG Grant in a single application*
 - *SBA currently predicts that the EEIG Grant funds will be available three (3) days after submitting the application*
 - *Your business has the option of accepting only the EEIG Grant and not the EIDL Loan*

Information Needed to Apply:

- *Basic information concerning the business (legal name/dba, contact information, EIN, nature of business, type of business organization, number of employees)*
- *Gross revenues for February 1, 2019 through January 31, 2020*

- *Cost of goods sold from February 1, 2019 through January 31, 2020*
- *Lost rents from rental properties due to COVID-19*
- *For nonprofits, costs of operations from February 1, 2019 through January 31, 2020*
- *Compensation from other sources received as a result of COVID-19*
- *Other information and documents as may be requested*

Relevant Time Periods:

- *Deadline: **December 31, 2020**; however, businesses are advised to apply as soon as possible*

Can I take advantage of all three?

Application and use of funds from a PPP loan does not preclude a business from obtaining an EIDL or Emergency Economic Injury Grant, nor is a business receiving relief from the Small Business Debt Relief Program precluded from eligibility for a PPP loan. However, there must not be duplication of the use of the funds from each of the programs.

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