

SMALL BUSINESS ADMINISTRATION'S PAYCHECK PROTECTION LOAN PROGRAM

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BENEFITS OF PAYCHECK PROTECTION LOANS

100% GUARANTEED

The loans are 100% federally guaranteed. No collateral, personal guarantees, or SBA fees are required.

DEFERMENT RELIEF

Complete payment deferment relief (principal, interest, and fees) for 6 months through 1 year.

\$10 MILLION LOAN CAP

Loan amounts of up to \$10 million per eligible entity.

4% INTEREST RATE

The interest rate on PPLs is capped at 4%.

LOAN FORGIVENESS

Full loan forgiveness for employers that maintain or restore pre-crisis payroll.

NO RECOURSE

SBA has no recourse against individuals, shareholders, members, or partners or loan recipients for non-payment, unless loan dollars are used for impermissible purposes.

BENEFITS OF PAYCHECK PROTECTION LOANS

Entities that were operating and paying workers on **February 15, 2020** are eligible, provided they are **either**—

SMALL BUSINESS CONCERNS

“Small business concerns” as defined in existing SBA laws and rules (based on SBA industry size requirements tied to employees or revenue).

OTHER ELIGIBLE RECIPIENTS

For-profit "business concerns," 501(c)(3) non-profits, 501(c)(19) veterans organizations, and Tribal businesses with not more than the greater of:

- 500 employees; **or**
- The SBA's "small" size standard in number of employees for the entity's industry.

Depending on your industry, your business may qualify, even if you have more than 500 employees.

DETERMINING EMPLOYER SIZE

GENERAL RULES

- In general, all entities count full-time, part-time, and “other basis” employees of all U.S. and foreign affiliates.
- Affiliation based on “totality of the circumstances” evaluations (e.g., ownership, management, common interests, economic dependence, etc.) to determine whether “control or ability to control” exists.

SPECIAL COUNTING RULES

Business concerns with NAICS codes starting with 72 (accommodations or food service) are eligible if they have 500 or fewer employees per location (use “primary industry” code).

SBA affiliation rules waived for any business concern:

- With a 72 NAICS code;
- Operating as a franchise under an SBA franchise identifier code; or
- Receiving financial assistance from Small Business Investment Act licensees.

REMINDER

The CARES Act is very short on details. In the meantime, it likely is worth evaluating eligibility for paycheck protection loans from the perspective of each separately organized business concern.

THE APPLICATION PROCESS

TO ACCESS PAYCHECK PROTECTION LOANS, BORROWERS MUST PROVIDE A GOOD-FAITH CERTIFICATION TO THE LENDER THAT—

- ✓ The loan is needed to "support ongoing operations" during the COVID-19 emergency;
- ✓ Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments; and
- ✓ They do not have an application pending for, nor have they received, any other SBA business loan for the same purpose since February 15, 2020.

Additional documentation is required for self-employed applicants, independent contractors, and sole proprietors.

Some applicant requirements that normally would apply for SBA loans (e.g., proof that the applicant is not able to get credit elsewhere, personal guarantees, fees etc.) are waived, but it's unclear what else in existing SBA loan applications will be retained and/or what other documentation lenders may require (e.g., how to establish payroll cost amounts, verify the size of the entity, etc.).

MAXIMUM LOAN AMOUNT

LOANS ARE CAPPED AT THE LESSER OF—

\$10 MILLION

OR

**250% OF AVERAGE MONTHLY
"PAYROLL COSTS" DURING THE
LAST YEAR (OR ALTERNATIVE
LOOK-BACK PERIODS FOR NEW
AND SEASONAL BUSINESSES)**

Plus any outstanding EIDL amounts to be refinanced

USES FOR LOANS

LOAN DOLLARS MAY BE USED FOR—

GROUP HEALTH CARE BENEFITS & INSURANCE PREMIUMS

Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums.

MORTGAGE INTEREST

Payments of interest on mortgage obligations.

PAYROLL COSTS

This includes employee or sole proprietor/independent contractor compensation up to annual compensation of \$100,000 prorated for the covered period; paid leave; severance payments; payment for group health benefits, including insurance premiums; retirement benefits; and state and local payroll taxes.

It excludes compensation above \$100,000 per year; certain federal taxes; compensation to non-U.S. employees; and sick and family leave wages for which credit is allowed under the Families First Coronavirus Relief Act.

EXISTING SBA USES

Any uses already permitted for SBA Business Loans (e.g., inventory, supplies, building or land purchases, construction, site improvements, etc.).

INTEREST ON OTHER OBLIGATIONS

Interest on any other debt obligations incurred before February 15, 2020.

RENT & UTILITIES

This includes rent (including rent under a lease agreement and utilities).

MAXIMUM LOAN FORGIVENESS AMOUNT

THE MAXIMUM AVAILABLE FORGIVENESS AMOUNT (UP TO THE FULL PRINCIPAL AMOUNT OF THE LOAN) IS THE SUM OF THE FOLLOWING INCURRED AND PAID WITHIN 8 WEEKS OF YOUR LOAN ORIGINATION (I.E., THE “FORGIVENESS PERIOD”)—

- Payroll costs;
- Interest on mortgage obligations incurred before February 15, 2020;
- Rent obligations in place since before February 15, 2020; and
- Utility payments for services that began before February 15, 2020.

The forgiveness provisions seem to incentivize quick deployment of loan dollars to these priority buckets of expenses. If you do not spend your full loan amount in these four areas within 8 weeks of getting your loan, you will not be eligible for forgiveness of your full loan amount.

REDUCTIONS IN LOAN FORGIVENESS

REDUCTIONS/PENALTIES

Maximum forgiveness amounts will be reduced:

- Proportionately for reductions in average full-time equivalent employees between pre-crisis levels and the 8-week forgiveness period;
- Via a straight reduction for payroll reductions over 25% (compared to the prior completed quarter of employment) for workers making less than \$100,000 annually; and
- For any advances taken on SBA economic injury disaster loans (EIDLs).

RELIEF FROM REDUCTION PENALTIES

There is relief from these forgiveness penalties for businesses that restore payroll to pre-crisis levels in the next few months. The reduction rules will not apply, if the employer eliminates by June 30, 2020:

- Reductions (compared to February 15, 2020) in the number of full-time equivalent employees made between February 15, 2020 and April 26, 2020; and/or, as applicable,
- Salary reductions (compared to February 15, 2020) made between February 15, 2020 and April 26, 2020 for 1 or more employees.

LONGER-TERM PAYROLL COMMITMENTS?

There do not appear to be any long-term payroll maintenance requirements beyond the expiration of the paycheck protection loan program on June 30, 2020.

APPLYING FOR LOAN FORGIVENESS

TO RECEIVE LOAN FORGIVENESS, BORROWERS MUST APPLY TO THEIR LENDER WITH DOCUMENTATION—

Verifying full-time equivalent employees on payroll and their pay rates (via IRS payroll tax filings and state income, payroll, and unemployment filings);

On covered costs/payments (e.g., canceled checks, receipts, or other documents verifying mortgage, rent, and utility payments); and

Certifying (by an authorized business representative) that the documentation is true and correct and that forgiveness amounts requested were used to retain employees and make other forgiveness-eligible payments.

FOR LOAN BALANCES REMAINING AFTER FORGIVENESS, LOANS WILL CONTINUE TO BE FEDERALLY GUARANTEED, INTEREST RATES WILL REMAIN CAPPED AT 4%, AND LOAN MATURITY WILL BE CAPPED AT 10 YEARS FROM THE FORGIVENESS APPLICATION DATE.

INTERACTION WITH CARES ACT TAX BENEFITS

NO EMPLOYEE RETENTION CREDIT FOR PPL RECIPIENTS

- The employee retention credit provides eligible employers a refundable credit against payroll tax (Social Security and Railroad Retirement) liability equal to 50% of the first \$10,000 in wages per employee (including value of health plan benefits). Eligible employers must have carried on a trade or business during 2020 and be experiencing either:
 - At least a partial suspension of operations due to government orders (e.g., limiting commerce, travel, group meetings, etc.); or
 - A year-over-year reduction in gross receipts of at least 50%.
- For employers with more than 100 full-time employees, only employees who are currently not providing services for the employer due to COVID-19 causes are eligible for the credit.

NO EMPLOYMENT TAX DEFERRAL FOR RECIPIENTS OF PPL FORGIVENESS

- Employment tax deferral relief under the CARES Act postpones the due date for depositing employer payroll taxes and certain self-employment taxes attributable to wages paid during 2020. The deferred taxes would be payable over the next two years—half due December 31, 2021 and half due December 31, 2022.

BUSINESSES WILL HAVE TO COMPARE THE BENEFITS OF PPLS AND THESE TAX CREDITS/DEFERRALS TO DETERMINE WHICH PATH PROVIDES THE GREATER FINANCIAL BENEFIT (E.G., COMPARE IMMEDIATE LIQUIDITY NEEDS WITH LONGER-TERM TIME VALUE OF MONEY CALCULATIONS).

WHAT'S NEXT?

APRIL 10, 2020

SBA has until April 10, 2020 to issue regulations implementing the paycheck protection loan program. The rulemaking will **not** be subject to typical public notice and comment processes.



LOAN APPLICATIONS

Following issuance of the rules, lenders will begin processing loan applications.



APRIL 26, 2020

SBA has until April 26, 2020 to issue specific guidance on the loan payment deferment relief and the loan forgiveness provisions.

OTHER FUNDING OPTIONS TO CONSIDER

DIRECT LOAN PROGRAM FOR ELIGIBLE BUSINESSES

Eligible entities are businesses created or organized in the U.S. that have significant operations and a majority of its employees based in the U.S.

DIRECT LOAN PROGRAM FOR MID-SIZE BUSINESSES

Eligible entities are businesses with 500–10,000 employees who are domiciled in the U.S. with significant operations and a majority of its employees based in the U.S. Other eligibility criteria include:

- The business must not be a debtor in bankruptcy; and
- The uncertainty of the economic conditions must make the loan necessary to support ongoing operations.

DIRECT LOAN PROGRAM FOR AIR CARRIERS, CARGO AIR CARRIES, AND BUSINESSES CRITICAL TO MAINTAINING NATIONAL SECURITY

Eligible entities are businesses created or organized in the U.S. with significant operations and a majority of its employees based in the U.S. Other eligibility criteria include:

- Credit must not be reasonably available;
- The business must have incurred/be expected to incur covered losses such that continued operations of the business are jeopardized; and
- The intended obligation is prudently incurred.

QUICK PRIMER ON LOANS FOR MID-SIZE BUSINESSES

ELIGIBILITY

Eligible entities are businesses with 500-10,000 employees who are domiciled in the U.S. with significant operations and a majority of its employees based in the U.S. Other eligibility criteria include:

- The business must not be a debtor in bankruptcy; and
- The uncertainty of the economic conditions must make the loan necessary to support ongoing operations.

RESTRICTIONS

To receive the loan, the eligible entity must:

- Not pay dividends or buy back stock;
- Intend to restore not less than 90% of workforce as of February 1, 2020, and to restore all compensation and benefits within 4 months after declaration that of the public health emergency's termination;
- Retain 90% of workforce (at full compensation and benefits) until September 30, 2020;
- Not outsource or offshore jobs for the loan's duration plus two years;
- Not abrogate collective bargaining agreements for the loan's duration plus two years; and
- Remain neutral in any union organizing effort for the term of the loan; and
- Comply with executive compensation restrictions for the term of the loan plus one year, including:
 - Employees > \$425,000 in 2019 cannot receive a raise, nor can severance be more than double maximum compensation; and
 - Executives > \$3 million in 2019 cannot make more than \$3 million + ½ of the amount over \$3 million in 2020.

COMMERCIAL TERMS

The loans will be:

- Direct loans from private lenders;
- With interest rates of not more than 2% per year; and
- With no principal or interest due for the first 6 months.

QUESTIONS?

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