

The Coronavirus Aid, Relief, and Economic Security Act “CARES Act”

Paycheck Protection Program For Small Businesses

Overview

- In this webinar we will discuss:
 - The purpose of the Paycheck Protection Program
 - The eligibility period during which loans will be issued
 - Types of businesses that are eligible to participate in the program
 - The size, interest rate and maturity limits of the loans
 - What the loan proceeds can be used for
 - Loan forgiveness and payment deferrals
 - Collateral and related matters
 - How to obtain a PPP Loan

Description and Purpose

- The Paycheck Protection Program (PPP) provides short-term cash flow assistance to small businesses and other eligible entities to help these businesses and their employees deal with the immediate economic impact of the COVID-19 pandemic
- Loans are made by lenders certified by the Small Business Administration (SBA) and other accredited lending institutions
- The PPP will be administered by the SBA
- The amount appropriated for PPP loans is \$349,000,000,000

Eligibility Period

- PPP loans must be made during the period prior to June 30, 2020
- Businesses should be prepared to apply quickly, as funds will be distributed on a first come, first-served basis

PPP Eligible Businesses

Eligible types of businesses

- Business concerns including small business concerns and tribal business concerns
- 501(c)(3) nonprofits
- 501(c)(19) veterans organizations

PPP Eligible Businesses

Eligible types of businesses (cont'd)

- Other eligible types of businesses include:
 - Sole proprietors
 - Independent contractors
 - Self-employed individuals, such as “gig economy” workers

PPP Eligible Businesses (cont'd)

Eligibility Criteria

- Business must have been in operation on February 15, 2020
- Business must have paid employee salaries and payroll taxes or paid independent contractors as reported on Form 1099-MISC

PPP Eligible Businesses (cont'd)

Size Restrictions

- 500 or fewer employees (full and part time); or
- the applicable size standard for the business' industry as provided by the SBA, if higher;
 - The SBA publishes applicable size standards for each industry, broken down by North American Industry Classification System (NAICS) codes
 - They can be found on [sba.gov](https://www.sba.gov)
 - Size standards are mostly based on the average annual receipts or the average number of employees
 - There is also a convenient “size standards tool” on the SBA website

PPP Eligible Businesses (cont'd)

Special Provisions on Size for accommodation and food services businesses

- The 500 employee limit is 500 employees per physical location, not for the entire corporate entity.
- For example, a restaurant chain that employs 1,700 employees over 10 locations would be eligible for loans at each location that has less than 500 employees, under the PPP.

PPP Eligible Businesses (cont'd)

Affiliation Rules

- As a general rule, in order to determine whether size restrictions are met, employees of affiliates of an applicant are included.
- Entities are affiliates of each other when one controls or has the power to directly or indirectly control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.
- The affiliation rules are waived solely for the accommodation and food service industries and for franchises.

Use of PPP Loan Funds

- Loan funds may be used to pay the following expenses incurred during the period from February 15, 2020 through June 30, 2020:
 - Payroll costs
 - Salaries, wages, vacation, parental, family, medical or sick leave, severance, retirement benefits, state or local taxes assessed on compensation
 - **Exception** – PPP loan funds CANNOT be used to pay that portion of salaries, if any, over \$100,000
 - Costs related to group healthcare benefits i.e. insurance premiums

Use of PPP Loan Funds (cont'd)

- Loan funds may also be used to pay the following expenses incurred during the period from February 15, 2020 through June 30, 2020:
 - Employee commissions and tips
 - Interest on mortgage obligations, but not principal
 - Rent (including rent under a lease)
 - Utilities
 - Interest on other debt incurred prior to obtaining the loan (**Note:** such payments of interest are not forgivable under the PPP)

Payment Forgiveness

Basics

- Principal amounts on PPP loans for the first 8-week period from when the loan is made will be forgiven **if** appropriate documentation is submitted to show that the funds were expended during this period for eligible uses.
- The amount of forgiveness is the sum of the following costs incurred and payments made during the 8-week forgiveness period: payroll costs (excluding that portion of any salaries over \$100,000); interest on a covered mortgage obligation; covered rent obligation; and covered utilities.
- The amount that may be forgiven cannot exceed the principal amount of the loan.
- Consistent with the principal purpose of the CARES Act, the SBA has said that not more than 25% of the forgiven amount may be for non-payroll costs.

Payment Forgiveness (cont'd)

Factors that reduce Payment Forgiveness

- The amount forgiven will be ratably reduced if average number of full-time employees during the 8-week forgiveness period is less than the average number of full-time employees during either of the following periods (the employer chooses which period to compare):
 - February 15, 2019 through June 30, 2019; or
 - January 1, 2020 to February 29, 2020
- The amount of forgiveness will be reduced by the amount of reduction in salary of any employee earning under \$100,000 per year, to the extent such reduction exceeds 25% of the employee's salary during the most recent full quarter preceding the forgiveness period.

Payment Forgiveness (cont'd)

Incentives to Rehire Workers

- Employers that rehire previously laid-off employees will not be penalized for having a reduced payroll at the beginning of the forgiveness period.
- Reductions in the number of FTEs or in the salary or wages of one or more employees that occurs during the period from February 15, 2020 to April 26, 2020 will be disregarded if eliminated by June 30, 2020.

Payment Forgiveness (cont'd)

Businesses must apply for forgiveness

- After the 8-week forgiveness period, a business may apply for forgiveness by submitting:
 - documentation regarding the eligible uses of loan funds (federal payroll tax filings, state income, payroll and unemployment insurance filings, cancelled checks or other documents verifying payment of mortgage interest, utilities, etc.)
 - a certification that such documents are true and correct, as well the amount to be forgiven, and
 - any other documentation the SBA Administrator deems necessary.
- The SBA is requiring lenders make a forgiveness determination within 60 days of submission.

Payment Forgiveness (cont'd)

No “cancellation-of-indebtedness” income

- The SBA will purchase loan forgiveness amounts from its certified lenders.
- The canceled indebtedness will not result in taxable income to the business.

Payment Deferral

- After any loan forgiveness, small businesses may defer payment of remaining principal, interest, and fee balances for at least 6 months and not more than a year.
- SBA is stating that all payments will be deferred for six months. Interest will accrue during this period.

Summary

Businesses can get a substantial portion of their loan forgiven in the first 8 weeks following issuance, and not have to make any payments for six months.

PPP Loan Terms

- Loans can be as large as 250% of a business' average monthly payroll costs over the one year period before the loan is made, plus the amount of any COVID-19 Economic Injury Disaster Loan previously made to the business that is refinanced with the PPP loan, not to exceed \$10 million.
 - The portion of an employee's salary above \$100,000, if any, is not counted as payroll costs.
- Interest rate will be 1%.
- Maximum maturity will be 2 years from date on which borrower applies for forgiveness, with no prepayment penalty

No Security; Certain Fees Waived; Nonrecourse to Owners

- No collateral is required to be pledged
- Normal personal guarantee requirement for SBA loans is waived
- The SBA's guaranty fee and annual servicing fee are waived
- The requirement that business is not able to access credit elsewhere is waived
- The loan is nonrecourse to the business's shareholders, members and partners **if** loan proceeds are used for eligible purposes

How to obtain a PPP Loan

- PPP loan will be made by any existing SBA lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating.
- Other regulated lenders will be available to make these loans as soon as they are approved and enrolled in the program.
- PPP loan applications started to be accepted on April 3, 2020, for small businesses and sole proprietorships, and will be accepted on April 10, 2020, for independent contractors and self-employed individuals.

Regulations Expected Soon

- The SBA released an Interim Final Rule on April 2 and is required to issue regulations by April 13, 2020; however, we expect further guidelines sooner.
- The regulations will provide more specifics to both lenders and applicants.
- Arent Fox will provide additional analysis and guidance once the regulations are released.
- Arent Fox has formed a Business Loan Task Force to counsel clients on the business loan programs included in the CARES Act.

Questions?

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Mid-Size Business Loan Program

General Mid-Size Loan Program Facts

- **Program Description:** Contained within Section 4003 of the CARES Act, which authorizes funds to provide liquidity to eligible businesses, States, and municipalities (CARES Act, Section 4003(b)(4))
- **Program Size:** \$454 billion (CARES Act, Section 4003(b)(4)) for medium and large enterprises, with a special focus on medium-sized businesses (500 – 10,000 employees)
- **Program Administration:** Federal Reserve Board of Governors (CARES Act, Section 4003(b)(4))

Mid-Size Loan Program Eligibility Requirements

- **Organization:** The recipient must be organized in the United States.
- **Employee Location:** The majority of the recipient's employees must be located in the United States.
- **Eligibility for Other Programs:** The recipient must not have otherwise received adequate economic relief in the form of loans or loan guaranties provided under the CARES Act.
- **Bankruptcy:** The recipient must not be a debtor in a bankruptcy proceeding.

Mid-Size Loan Program Business Restrictions

- **Restoration of Workforce:** Certified intention to restore at least 90% of its workforce (as of February 1, 2020), and to restore all compensation and benefits to its workers no later than 4 months after the end of the public health emergency, as determined by the Secretary of Health and Human Services.
- **No Dividends:** Recipient must not pay dividends with respect to its common stock while the loan is outstanding.
- **No Repurchase of Equity Security:** Recipient must not repurchase equity security of the recipient or any parent company that is listed on a national securities exchange while the loan is outstanding except to the extent contractually committed as of March 26, 2020.

Mid-Size Loan Program Business Restrictions (continued)

- **No Outsourcing of Jobs:** Recipient must not outsource or offshore jobs for the term of the loan and for 2 years after completing repayment of the loan.
- **Union Contracts:** Recipient must certify that it will not abrogate existing collective bargaining agreements for the term of the loan and for 2 years after completing repayment of the loan.
- **Union Neutrality:** The recipient must certify that it will remain neutral in any union organizing effort for the term of the loan.

Mid-Size Loan Program Executive Compensation Restrictions

- **Executive Salary Freeze:** Officers and employees that received total compensation more than \$425,000 in 2019 are not eligible for increases in total compensation above the 2019 level until one year after the loan is repaid.
- **Highly Compensated Executive Salary Reduction:** Until one year after the loan is repaid, officers and employees that received total compensation of more than \$3,000,000 in 2019 are limited to a salary equal to (i) \$3,000,000, plus (ii) 50% of the excess over \$3,000,000 (e.g., an executive with \$10 million 2019 compensation would be capped at \$6.5 million).
- **Severance Restriction:** No retirement or severance packages can exceed twice the maximum total compensation during 2019.



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