**CARES Act**

**A SUMMARY OF PROVISIONS RELATED TO SMALL BUSINESSES (FEWER THAN 500 staff)**

**The Paycheck Protection Program (“PPP”)**

Section 7(a) of the Small Business Act has for years authorized the SBA to provide and to guarantee loans to small businesses in the United States. In practice, Section 7(a) small business loans are made by eligible financial institutions and partially guaranteed by the SBA. The CARES Act creates a new loan guaranty program under Section 7(a) called the Paycheck Protection Program, to provide small businesses with support to cover payroll and certain other expenses over the next three months.

The act authorizes up to $349 billion in forgivable loans to small businesses and 501 (c) (3) non-profits with fewer than 500 employees. Also eligible are self-employed individuals who operate as a sole proprietor and independent contractors who regularly carry on a trade or business and will pay their employees during the COVID-19 crisis.

The primary features of the Paycheck Protection Program that distinguish it from other Section 7(a) loans are the generous forgiveness and government guarantee provisions:

* Recipients may receive forgiveness equal to eight weeks of payroll and certain other overhead costs, subject to conditions discussed below.
* To encourage lending, the SBA will guarantee payment of 100% of the loans; ordinary Section 7(a) guarantees limits are 75% or 85%, depending on loan size.

**When can I apply?**

Starting April 3, 2020, small businesses and sole proprietorships can apply for loans to cover their payroll and certain other expenses through existing SBA lenders.

Starting April 10, 2020, independent contractors and self-employed individuals can apply for loans to cover their payroll and certain other expenses through existing SBA lenders.

**Where can I apply?**

You can apply through 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 once they are approved. You should consult with your local lender as to whether it is participating. Visit www.sba.gov for a list of SBA lenders. Click <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf> for the application.

**Who can apply?**

All businesses – including nonprofits, veterans’ organizations, tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors – with 500 or fewer employees can apply. Businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries (click <https://www.sba.gov/federal-contracting/contracting-guide/size-standard> for additional detail).

The SBA’s affiliation standards are waived for small businesses (1) in the hotel and food services industries (click <https://www.census.gov/eos/www/naics/> for NAICS code 72 to confirm); or (2) that are franchises in the SBA’s Franchise Directory (click to check); or (3) that receive financial assistance from small business investment companies licensed by the SBA. Additional guidance may be released.

Having existing SBA loans should not affect your ability to get a loan.

You should start thinking now, to get a clear understanding of what your eligibility is based on an understanding of historical financials and what payroll expenses are so you know what you need and what you can ask for.

**What must I do to apply?**

You will need to complete the Paycheck Protection Program loan application and submit the application with the required documentation to an approved lender that is available to process your application by June 30, 2020. Click <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf?j=268557&sfmc_sub=124923632&l=3151_HTML&u=8813281&mid=7306387&jb=667&utm_medium=email&SubscriberID=124923632&utm_source=NewsUp_A20Mar225&Site=aicpa&LinkID=8813281&utm_campaign=Newsupdate&cid=email:NewsUp_A20Mar225:Newsupdate:Share+the+application:aicpa&SendID=268557&utm_content=Special> for the application. You will need to provide your lender with payroll documentation.

Lenders will not be going through historical tax returns or personal financial statements or prior profit and loss to see if the business is profitable. There are no credit tests.

**Do I need to first look for other funds before applying to this program?**

No. This is usually a requirement, but it is being waived.

**How long will this program last?**

The program is open until June 30, 2020, but you should apply as quickly as you can because there is a funding cap, and lenders need time to process your loan.

**How many loans can I take out under this program?**

Only one.

And, if you are approved for this SBA program, you will likely have to pull out from others; this includes the disaster loans that folks were applying for last week.

**What can I use the loans for?**

* Payroll costs (FTE, PTE and contractors), including benefits;
* Interest on mortgage obligations incurred before February 15, 2020;
* Rent, under lease agreements in force before February 15, 2020;
* Utilities, for which service began before February 15, 2020;
* Purposes allowed under the traditional Section 7(a) lending programs, including capital expenditures and working capital; and
* Refinancing loans received through the Economic Injury Disaster Loan program between January 31, 2020, and the date on which Paycheck Protection Program loans become available.

**What counts as payroll costs?**

They include:

* Salary, wages, commissions, or tips (capped at $100,000 on an annualized basis for each employee);
* Employee benefits, including costs for vacation; parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits, including insurance premiums; and payment of any retirement benefit;
* State and local taxes assessed on compensation;
* For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at $100,000 on an annualized basis for each employee.

**How large can my loan be?**

Loans can be for up to two months of your average monthly payroll costs from the last year, plus 25%. That amount is subject to a $10 million cap. If you are a seasonal or new business, you will use different applicable time periods for your calculation. Payroll costs will be capped at $100,000 annualized for each employee.

**How much of my loan will be forgiven?**

You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the eight weeks after getting the loan. It is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

You will also owe money if you decrease your full-time employee headcount or if you decrease salaries and wages by more than 25% for any employee who made less than $100,000 annualized in 2019. You have until June 30, 2020, to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

**How can I request loan forgiveness?**

You can submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.

**What is my interest rate?**

1.00% fixed rate.

**When do I need to start paying interest on my loan?**

All payments are deferred for 6 months; however, interest will accrue over this period.

**When is my loan due?**

In two years.

**Can I pay my loan earlier?**

Yes. There are no prepayment penalties or fees.

**Do I need to pledge any collateral for these loans?**

No.

**Do I need to personally guarantee this loan?**

No. (However, if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges against you.)

**What must I certify?**

As part of your application, you need to certify in good faith that:

* Current economic uncertainty makes the loan necessary to support your continuing operations.
* The funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments.
* You have not and will not receive another loan under this program.
* You will provide to the lender documentation that verifies the number of full-time equivalent employees on payroll and the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight weeks after getting this loan.
* All the information you provided in your application and in all supporting documents and forms is accurate. Knowingly making a false statement to get a loan under this program is punishable by law.
* You acknowledge that the lender will calculate the eligible loan amount using the tax documents you submitted. You affirm that the tax documents are identical to those you submitted to the IRS. You agree that the lender can share the tax information with the SBA’s authorized representatives, including for compliance purposes.

**I’ve already been forced to let some people go or reduce hours: does this mean I won’t qualify for loan forgiveness?**

No! Reductions in employment that occurred between February 15, 2020, and March 17, 2020, shall not reduce loan forgiveness IF by June 30, 2020, the reduction in numbers or wages has been eliminated.

**Is the portion of the loan that is forgiven considered income?**

No! The portion of the loan that is forgiven is not considered income.

**What if the loan is not forgiven in whole or part; what are the terms?**

Loan terms per above.

**ECONOMIC INJURY DISASTER LOANS**

There is a lot of uncertainty as to these programs and how they will affect the disaster loans that were part of the last round of legislation, before the CARES Act, and other SBA relief loans.

The SBA disaster relief loan site was down. Financial experts believe this is because it is being retooled in conjunction with the most recent legislation. They think the government is trying to rebuild the SBA site.

The best guess right now is that the government wants to push most relief for private employers to banks and public financing through the Payroll Protection Program and limit the use of the disaster grants and loans.

There is speculation that those who have already applied for a disaster SBA loan will need to resubmit after the new site is up.

**THAT’S NOT ALL!**

The 880 pages of the CARES act include many other provisions that you may find beneficial.

**Individual tax provisions:**

* Stimulus checks of $1,200 per person with an annual gross income (AGI) of less than $75,000, or $2,400 per couple with AGI less than $150,000; plus $500 per child. (Check out this calculator: <https://www.kiplinger.com/tool/taxes/T023-S001-stimulus-check-calculator-2020/index.php>)
* Penalty-free withdrawals of up to $100,000 from an IRA or 401k; no tax if repaid within three years.
* Charitable deduction “above the line” up to $300—meaning you can get a benefit from charitable contributions even if you don’t itemize.

**Business tax provisions:**

* Qualified improvement property depreciable life changed from 39 years to 15 years, allowing for 100% bonus depreciation.
* Net operating loss carryback of five years.
* Employee retention credit equal to 50% of the employer Social Security tax of 6.2% for any period the business remains open but for which gross receipts fall by 50% when compared with prior quarters (cannot use if also getting a PPP loan).
* Delayed payment of employer portion of Social Security taxes through December 31, 2020; 50% due in 2021 and 50% due in 2022.

**WHAT HAPPENS NEXT**

There will likely be a few weeks of chaos. No banks are ready to fund or process the PPP loans. It will take weeks before the protocols and systems are in place. Technology and processes for processing these loans have to be built. It is unclear what lenders are going to jump in, how many will jump in, and how quickly they will get up to speed.

No one is processing these loans today. Barring some miracle, these will not be available for weeks.

**TIPS FOR HOW TO RESPOND NOW**

If you have a line of credit, ask your bank to increase it. Lines of credit should be about 10% of top line sales, 85% of accounts receivable and 50% of inventory.

If you have current loans, consider asking for deferment. Many loans have deferment programs, and it is better to get in early, as lenders will be bombarded with these requests.

Monitor and pursue any loans and programs offered by states and cities, many of which will be taking action.

Beware of scams. There will be a lot.

Contact your current SBA lender if you already have one and try to find out if it will be offering PPP loans.

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