

CARES Act: SBA Loans Under the Paycheck Protection Program

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INTRODUCTION

Under the recently-passed CARES Act, the Federal government created several new programs to protect and bolster the United States economy from the fallout resulting from the COVID-19 pandemic. Perhaps the most important of those programs to businesses is the Paycheck Protection Program (“PPP”), because it provides loans, which can be completely forgiven, to eligible small businesses throughout the United States. The PPP also applies to other entities, including charities.

WHO IS ELIGIBLE?

Since the purpose of the PPP is to get money into the hands of businesses quickly so they can pay their employees and continue to operate, Congress broadly defined the eligibility. Virtually every business in the U.S. that was in existence on February 15, 2020, and had fewer than 500 employees is eligible. Self-employed individuals, independent contractors, sole proprietorships and most charities also may qualify for a PPP loan.

HOW DOES AN ELIGIBLE BUSINESS GET A PPP LOAN?

An eligible business must apply through a SBA-approved lender and can only apply for one PPP loan at a time. Given the forgivable nature of this loan, and the other benefits, SBA lenders will be flooded with applications for these loans. Therefore, we highly encourage businesses to use a SBA lender with whom they already have a strong relationship, which may help expedite the application process. Under this program, many loan fees are waived, loans are considered nonrecourse loans, and business owners do not have to give any personal guaranties or pledge any collateral for a PPP loan.

Sample PPA Loan Application:

<https://www.sba.gov/sites/default/files/2020-03/Borrower%20Paycheck%20Protection%20Program%20Application.pdf>

HOW MUCH CAN AN ELIGIBLE BUSINESS BORROW?

Generally, each eligible business can obtain 2.5 times its average monthly payroll costs (calculated from the same period in 2019)¹, but in no case more than \$10 million. Payroll costs are defined broadly, as well, and include all of the following paid to or for U.S. employees, excluding costs over \$100,000 on an

¹ Even though the CARES Act provides for 2.5 times the borrower’s average monthly payroll costs, the U.S. Department of Treasury, in its Fact Sheet on the Paycheck Protection Program, states the maximum loan amount will be only 2.25 times the borrower’s average monthly payroll costs.

annualized basis for each employee, prorated for the applicable period:

- Salary, wages, commissions, or similar compensation
- Cash tips paid
- Vacation, parental, family, medical, or sick leave
- Allowances for dismissal or separation
- Group health care benefits, including insurance premiums
- Retirement benefits
- State and local tax assessed on compensation for employees

HOW MUCH WILL NEED TO BE PAID BACK?

The best thing about a PPP Loan is that it is fully forgivable if the borrowed funds are used during the first eight weeks of the loan, for the following only:

- Payroll costs
- Interest (not principal) on mortgages that existed before February 15, 2020
- Rent paid on leases that existed before February 15, 2020
- Utilities paid so long as the utility service was established before February 15, 2020

However, even if an eligible business uses the borrowed funds for these purposes, there will be a reduction in the forgiveness if the business reduces its number of full-time employees or reduces an employee's compensation by more than 25 percent.

Any amount that is not forgiven must be repaid within 10 years at an interest rate no higher than four percent. But no loan payments need to be made for the first six months of the loan, and one can extend that deferment up to a year, if necessary. Each eligible business is encouraged to discuss this with its lender. Also, there is no pre-payment penalty for any PPP loan.

ARE THERE ANY TAX BENEFITS?

A PPP loan amount that is forgiven is not taxable as income, yet the recipient business can still deduct from its income the payroll costs, rent and utilities it paid with the loan money. However, a PPP loan recipient whose loan is forgiven will not be able to take the tax credits otherwise allowable under (i) the Families First Coronavirus Response Act ("FFCRA") for family and sick leave pay and (ii) under the CARES Act for the retention of employees. Each business should consider the economic and financial aspects of the available tax credits versus the forgivable PPP loan.

CONCLUSION

Given the numerous benefits of the PPP loans, we strongly urge all small businesses in the U.S. to contact their SBA-approved lender or initiate a relationship with a SBA-approved lender quickly to determine if they qualify for a loan. The program is only available through June 30, 2020, so interested businesses should act promptly.

Additional SBA Guidance: <https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>

U.S. Treasury Department PPP Fact Sheet: <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>

If you have questions about the CARES Act or need a referral to a SBA lender, please contact your Lawrence Kamin attorney.

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