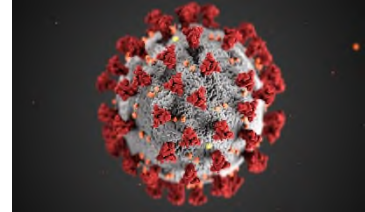


## **SBA Paycheck Protection Program – What Small Business Owners and Non-Profits Should Know**

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On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (or the “CARES Act”) became law after being passed by Congress and signed by the President. The CARES Act provides approximately \$2 trillion of spending from the federal government to support individuals and businesses during the global COVID-19 pandemic.

The CARES Act, among other things, creates the **Paycheck Protection Program** which provides for changes to loans guaranteed by the Small Business Administration (“SBA”) to small businesses and non-profit entities. Under Section 1106 of the CARES Act, the Paycheck Protection Program allows qualified entities and individuals to receive fully guaranteed loans from qualified SBA lenders to pay for covered business expenses (including payroll, rent, utilities, and mortgage interest) and the loans will be entirely forgiven if certain conditions as met.

Essentially, the Paycheck Protection Program provides what are in essence grants from the federal government to help small businesses and non-profits keep their operations running during the pandemic crisis.

### **Who Qualifies for the Program?**

Most small businesses and non-profits will qualify for the Paycheck Protection Program. Specifically, the Act provides that the following types of businesses are eligible:

- Small businesses;
- 501(c)(3) nonprofit organizations;
- Veterans Organizations; and
- Tribal business concerns.

In order to qualify, the business or entity must employ no more than 500 employees or, if applicable, the “size standard in number of employees” established by the SBA for the industry in which the business operates. Certain businesses, particularly in the hospitality industry, that operate more than one (1) location may qualify so long as individual locations employ fewer than 500 employees.

For purposes of determining the number of employees a business has, “employee” includes individuals employed on a full-time, part-time, or other basis.

The Act also specifically applies to sole proprietors, independent contractors, and eligible self-employed individuals.

## **Borrower Requirements**

In order to qualify for a loan under the Paycheck Protection Program, a borrower will need to certify that:

- The loan request is necessary to support the ongoing operations of the borrower due to the uncertainty of current economic conditions;
- The funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- The borrower does not have another loan application pending under this program for the same purpose and same amounts; and
- The borrower has not already received another loan between February 15, 2020 and December 31, 2020 under this program for the same purpose and same amounts.

Notably, the SBA’s typical requirements of a personal guarantee and/or collateral from the borrower are not required for loans under the Paycheck Protection Program.

## **Amount of Loans**

Eligible recipients can apply and receive loans for as much as \$10 million or 2 and half times (250%) of their average monthly payroll costs, whichever is less.

Average payroll costs are to be calculated by determining the business’s average payroll costs for the 1-year prior to the date on which the loan is made.

Payroll costs with respect to employees can include:

- Salary, wages, commissions, or similar compensation;
- Payment of cash tips or equivalent;
- Payment of vacation, parental, family, medical, or sick leave (except for such leave covered by other aspects of the CARES Act);
- Allowance for dismissal or separation;
- Payment for group health benefits, including insurance premiums;
- Payment of retirement benefits; and/or
- Payment of state or federal employment taxes.

Payroll costs shall not include the compensation for any individual employee in excess of an annual salary of \$100,000, as prorated for the covered period. Payroll costs also exclude any individual employee who resides outside the United States.

## **Use of Loan Proceeds**

Funds from loans covered by the Paycheck Protection Program can be used for:

- Employee salaries, commissions, or other similar compensation;<sup>1</sup>
- Other payroll costs;
- Costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums;
- Mortgage interest payments;
- Rent or Lease payments;
- Utilities payments; and
- Interest on any other debt obligation that were incurred before February 15, 2020.

Funds from such loans specifically cannot be used for mortgage principal payments or to pay for other debt incurred after February 25, 2020.

## **Loan Terms**

Loans under the Paycheck Protection Program will have a maximum interest rate of four percent (4%) and a maximum maturity of ten (10) years.

In consideration of the current pandemic, all borrowers under this program are presumed to have been impacted by the pandemic and lenders are required to defer all payments, including interest, principal, and fees, for at least 6 months.

That being said, the loan may be entirely forgiven if certain circumstances are met.

## **Loan Forgiveness**

Loans made under the Paycheck Protection Program will be entirely forgiven if the loan proceeds are used exclusively for allowable expenditures during the 8-week period following the origination of the loan.

Specifically, the allowable expenditures include covered payroll costs, interest payments on mortgage obligation,<sup>2</sup> rent payments, and/or utility payments. The amount of the loan proceeds spent on the allowable expenditures for the 8-week period after the loan is made will be completely forgiven.

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<sup>1</sup> Payment of salaries and related payroll costs to employees with salaries over \$100,000 and/or reside outside of the United States are not included in the allowable use of funds and/or will not be considered for forgiveness purposes.

<sup>2</sup> The mortgage must be the responsibility of the borrower and the mortgage must predate February 15, 2020. The loan proceeds cannot be used to pay for a new mortgage created after February 15, 2020, or for a personal mortgage belonging to an employee, owner of the business borrower, or other obligation that does not belong to the “borrower” of the subject Paycheck Protection Program loan.

The amount of any loan forgiveness will be reduced if the borrower has fired, terminated, or otherwise dismissed any employees since February 15, 2020, or if employees' salaries or wages have been reduced, unless the employees are re-hired and/or had their previous salaries reinstated by not later than June 30, 2020.

### **Applying for Loan Forgiveness**

In order to qualify for loan forgiveness, the borrower will need to provide the lender with specified documentation to demonstrate the borrower's number of employees and verifying payments were made for allowable expenditures.

Specifically, the borrower will need to be prepared to provide evidence of the number of employees it had at relevant times, including:

- Payroll tax filings reported to the IRS; and
- State income, payroll, and unemployment insurance filings.

The borrower will also need to be prepared to provide evidence of the allowable expenditures including:

- Cancelled checks;
- Payment Receipts;
- Account Statements; and/or
- Other documents evidencing payments on covered mortgage obligations, covered leases, or utility payments.

The borrower will also need to provide certifications that the documents are true and correct and that the amount of the requested forgiveness was used retain employees, make interest payments on covered mortgages, rent obligations, and/or utility payments.

For tax purposes, forgiven loan amounts will not be considered gross income by the IRS.

### **Conclusion**

Any business or non-profit entity that is being negatively impacted by the global COVID-19 pandemic may want to consider applying for an SBA loan under the Paycheck Protection Program. The program will provide a lifeline to many small businesses and their employees to avoid layoffs and keep their business afloat during these difficult times.

Should you have questions about whether your business will qualify for loans under the Paycheck Protection Program and/or if expenditures would qualify as covered costs, the attorneys at Lee, Hong, Degerman, Kang & Waimey are here for you. LHDK&W has been advising clients on various legal issues, including regarding banking and lending laws, for over 30 years.



Keith's full bio can be found at: [http://lhlaw.com/attorneys/bios/keith\\_fichtelman](http://lhlaw.com/attorneys/bios/keith_fichtelman)

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