

Paycheck Protection Program: SBA Guidance and Application Available

Legal Alert
April 1, 2020

Updated April 6, 2020

The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), passed by Congress on March 27, created the Paycheck Protection Program (“PPP”) to help small businesses receive financial relief during the COVID-19 pandemic. The Department of Treasury recently released some much anticipated guidance on the PPP loans and a link to the online loan application.

UPDATE – On April 2nd, the SBA released its [Interim Final Rule](#) with respect to PPP loans.

The draft Interim Final Rule will be effective on the date it is published in the Federal Register. While comments may still be submitted to the SBA during the usual notice and comment period (the 30-day period after publication in the Federal Register), the formal notice and comment requirements have been waived under the CARES Act. You can submit a comment [here](#) using identification number SBA-2020-0015.

Review our post “[Congress passes the CARES Act](#)” for a brief overview of the CARES Act loan programs, their eligibility requirements and their benefits.

For interested businesses, we’ve highlighted key points of the guidance below:

What is the timeline to apply?

- Small businesses and sole proprietorships can start applying on Friday, April 3
- Independent contractors and self-employed individuals can start applying on Friday, April 10

Contact

John A. Knab

Related Services

Business & Corporate Finance
Cannabis
Creditors' Rights & Bankruptcy
Federal Tax
Food & Beverage
Health Care
Hospitality, Travel & Tourism
Insurance Coverage
Labor, Employment & Immigration
Litigation
Real Estate, Land Use & Environmental
Tax
Transportation & Logistics

Who exactly qualifies for a loan?

- If you have either:
 - Fewer than 500 employees (subject to exceptions for hospitality or food service industries), or
 - Less than or equal to the maximum number of employees allowed under the [industry size standards](#).
- You are either a:
 - Small business (defined by 15 USC 632) and subject to the affiliation rules under 13 CFR 121.301(f) (see our [previous post](#) regarding affiliation rules);
 - 501(C)(3) nonprofit organizations,
 - 501(C)(19) veterans organizations,
 - 31(b)(2)(C) tribal organizations, or
 - *Any other business (this includes sole proprietorships, partnerships, unincorporated businesses, any business).*

Who does not qualify for a loan?

- Household employers (people who employ nannies, housekeepers, etc.);
- Businesses listed under 13 CFR 120.110;
- Businesses engaged in any activity that is illegal under federal, state or local law;
 - This likely implicates cannabis businesses dealing with marijuana or businesses who are improperly dealing with industrial hemp in some states.
- Businesses with an owner of 20 percent or more who is “incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years”;
- Businesses (or business owners) that have ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years.

What are the first things I should do?

- Contact your bank. If your bank is already an SBA-approved lender, this should help minimize delays.
 - Unsure if your bank is an SBA-approved lender? Here is a link to the [top 100 SBA-approved lenders](#). If your bank is not on the list, it could still be an SBA-approved lender. Ask your lender to confirm.
- Let your bank know that you would like for your application to have “priority status” to expedite the process further. Banks will have discretion to do so.
- Check existing credit and loan agreements for covenants related to additional indebtedness.
- Analyze the net benefit of loan forgiveness.
- *Note:* Under the PPP, businesses are not required to seek funds elsewhere before turning to the SBA.
- *Note:* check your eligibility against the eligibility requirements in the PPP and the SBA small business size guidelines. They can be tricky! Please contact us if you require guidance.

How do I apply?

- Fill out and submit the [Paycheck Protection Program application form](#) and provide the other required documentation such as documentation of your payroll expenses (wages, benefits, taxes on compensation, etc.).
- You have until June 30, 2020 to apply, but we recommend applying as soon as feasibly possible as processing the loan can take some time and there is a finite amount of loans available.

Who can I get a PPP loan from?

- The SBA has determined that additional lenders are necessary to meet the demand. As such, the following types of lenders are eligible to make PPP loans (provided they are not identified by federal regulators as being in “Troubled Condition”):
 - Any federally insured depository institution or any federally insured credit union;
 - Any Farm Credit System institution, provided they meet certain federal requirements;
 - Any depository or non-depository financing, provided they meet certain requirements under the draft Interim Final Rule.

Once I get my loan, how may I use the funds?

- The following are approved expenses for PPP funds:
 - Payroll costs, including benefits;
 - Interest on mortgage obligations, incurred before February 15, 2020;
 - Rent, under lease agreements in force before February 15, 2020; and
 - Utilities, for which service began before February 15, 2020.

What qualifies as "payroll costs"?

- Payroll costs include:
 - Employee compensation for employees whose principal place of residence is the United States. This includes:
 - salary, wages, commissions or similar compensation;
 - cash tips (good faith estimates are acceptable);
 - payment for vacation, parental, family, medical or sick leave;
 - allowance for separation or dismissal;
 - employee benefits consisting of group health care coverage, including insurance premiums and retirement;
 - payment of state and local (NOT federal) taxes assessed on compensation of employees; and
 - (for an independent contractor or sole proprietor) wages, commissions, income or net earnings from self-employment or similar compensation.
- Payroll costs DO NOT include:

The compensation of an individual employee in excess of an annual salary of \$100,000;

Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA (Federal Insurance Contributions Act), Railroad Retirement Act taxes and income taxes required to be withheld from employees; and

Qualified sick and family leave wages under sections 7001 and 7003 of the Families First Coronavirus Response Act.

How much of the loan will be forgivable?

- Up to 100 percent of the loan is forgivable. However, your loan forgiveness can be reduced by any of the following:
 - Reducing your FTEs during the eight-week period after receiving your loan,
 - Decreasing wages by more than 25 percent for employees making less than \$100,000 in 2019,
 - Failing to restore your staffing and salary levels from changes made between February 15 and April 26, 2020,
 - Not more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs.

What is the interest rate and maturity date of loans?

- 1.00 percent, and
- Two-year maturity date.
 - Note that the CARES Act allowed the loan to be paid back in up to 10 years but, this was revised by the SBA and Treasury Secretary.

What are the conditions to get my loan 100 percent forgiven?

- The draft interim rule adds that no more than 25 percent of the loan may be used for anything other than payroll costs.
- Note that the amount of your loan is determined by payroll costs, mortgage interest, rent, utilities, etc. Despite this however, at least 75 percent of the loan must be spent on payroll costs only to get the loan 100 percent forgiven.

What are some other details about the loan that I should know?

- PPP loans will have a 1.00 percent fixed rate.
- Payments are deferred for six months, but interest will accrue during this time.
- The loans are due in two years (but can be pre-paid without penalty).
- No collateral or personal guarantees are required.

Paycheck Protection Program: SBA Guidance and Application Available



For additional resources on how to navigate business disruptions caused by COVID-19, please visit our [COVID-19 Resource Center](#) and reach out to our team with any questions.