

What you should know about the new CARES Act Loans

SBA Loan Program(s)

The CARES Act created a new program called the Paycheck Protection Program (“PPP”), which are loans for businesses that employ up to 500 employees (exceptions may apply). The PPP loans will be made by private lenders or banks through the SBA.

PPP loans may also be made to nonprofit organizations, veterans’ organization and Tribal businesses. In addition, sole proprietors, independent contractors and eligible self-employed individuals may also be eligible.

PPP loans are available to eligible businesses to pay operational costs such as payroll for employees who make less than \$100,000 per year, rent, mortgage interest payments, health benefits and utilities. The maximum loan amount is \$10 million and a formula is used based payroll costs incurred by the business to determine the size of the loan.

Vitaly, PPP loans may be forgiven to the extent businesses retain their employees who make less than \$100,000 annually. The loan forgiveness amount is equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on payroll costs, for loans or rent leases/agreements in-force prior to 2/15/20, interest payments on the mortgages, rent payments and payment on any utility for which service began before 2/15/20.

Portions of loans not forgiven are payable over a maximum of 10 years at a maximum rate of interest of 4%.

What is the Paycheck Protection Program?

The Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), includes a loan program to provide qualifying small businesses, including certain private equity portfolio companies and nonprofits, with short-term cash flow during mandated COVID-19-related closures. This as the Paycheck Protection Program (the “PPP”). The PPP is administered by the existing Small Business Administration (the “SBA”) 7(a) loan program and will make forgivable loans of up to \$10 million available to qualifying small businesses and nonprofit organizations.

Additional detail will be provided as the SBA drafts implementing regulations, which the Act requires to occur within 30 days of the passage of the CARES Act.

Paycheck Protection Program

\$350 billion will be made available for loans to small businesses and nonprofit organizations with 500 or fewer employees, with full or partial forgiveness available if the borrower meets certain requirements. PPP loans will be

administered by 800 existing SBA and Treasury certified lenders, including banks, credit unions, and other financial institutions.

- Interest rates are capped at 4%
- The SBA will not collect any yearly or guarantee fees and all prepayment penalties are waived
- No personal guarantee will be required, as the SBA will participate 100% in the guarantee of the loan amount through December 31, 2020
- Covered period is February 15, 2020 until June 30, 2020
- No collateral needed
- No fee to the borrower
- Any amount of loan proceeds not forgiven are payable over 10 years starting with the date of the application for loan forgiveness
- Interest payments are completely deferred for one year

Borrower Eligibility

The PPP covers a wide list of businesses including for-profit, private nonprofit and public nonprofits in size from single entrepreneurs up to 500 employees.

- For-profit businesses, including self-employed
- Public or private nonprofit organizations
- Greater of:
 - 500 employees or fewer including full-time, part-time or other basis
 - Employee count does not exceed the standard size of a company in such industry (as provided by the SBA's existing regulations)
- Businesses engaged in the accommodation and food services industry satisfying the following criteria:
 - 500 or fewer employees per location; and
 - Assigned an NAICS code beginning with number 72 – Accommodation and Food Services, i.e.,
 - Restaurants and other eating facilities
 - Drinking places
 - Special food services
 - Traveler accommodations (hotels, motels, etc.)
- Borrower must make a good faith certification as follows:
 - The uncertainty of current economic conditions caused by COVID-19 makes the loan request necessary to support ongoing operations.
 - Funds will be used for a permitted purpose only (see below).

- Funds received under the PPP are not used for the same purpose as funds obtained through another SBA program.

No Fees

There are no fees for applying or receiving a loan under the PPP.

Permitted Purposes

Businesses may use the loans under the PPP for the following expenses:

- Payroll costs, defined as follows:
 - Employee salaries, commissions and tips. These amounts may not exceed \$100,000 on an annual basis per employee.
 - Paid sick leave
 - Medical leave
 - Family leave
 - Continued group health care benefits including premiums
 - Retirement payments
 - Vacation pay
 - Dismissal and separation pay
- Payment of the following, if such expenses were incurred or pursuant to an agreement in force prior to February 15, 2020:
 - Interest payment on any mortgage
 - Rent on any lease
 - Utilities
 - Interest on debt obligations

How Much Can You Qualify For?

The CARES Act increases the maximum availability of SBA 7(a) loans, including PPP loans, to \$349 billion. The maximum PPP loan available to any business is \$10 million or, if less, 2.5 times the average monthly payroll costs of the business over the year prior to the making of the loan (practically, this may become the year prior to the loan application), excluding the prorated portion of any annual compensation above \$100,000 for any person.

Note that under the CARES Act, "payroll costs" include vacation, parental, family, medical, and sick leave; allowances for dismissal or separation; payments for group health care benefits, including insurance premiums; and retirement

benefits. Calculations vary slightly for seasonal businesses and businesses that were not in operation between February 15 and June 30, 2019.

Loan Terms

PPP loans bear interest at a maximum rate of 4% and mature no later than 10 years after determination of the amount to be forgiven (if any). Loan repayments under the PPP and all other SBA 7(a) programs will be deferred for six to 12 months, and the SBA is directed to issue guidance on the terms of this deferral. Unlike other SBA 7(a) loans, PPP loans have no collateral or personal-guarantee requirements. There will be no recourse to owners of borrowers for nonpayment, except to the extent proceeds are used for an unauthorized purpose (see above). For PPP loans, the SBA has waived prepayment penalties and has waived the guaranty fee and annual fee applicable to other SBA 7(a) loans.

Forgiveness of Loans

All borrowers of a loan under the PPP are eligible for forgiveness of such loan in an amount equal to the sum of the following costs incurred and payments made during the eight-week period beginning on the date of the origination of such loan (the "Relevant Period"; note this is forward-looking, not retroactive), subject to the limitations and definitions of such expenses set forth in the CARES Act:

- payroll costs;
- any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation);
- any payment on any covered rent obligation; and
- any covered utility payment.

The amounts that can be forgiven are subject to reduction based on the borrower's reduction in number of employees or reduction in salaries and wages in excess of 25%. However, if not later than June 30, 2020, a borrower re-hires employees that were terminated between February 15, 2020 and April 26, 2020 and reverses reductions in salary and wages made between February 15, 2020 and April 26, 2020, those terminations and reductions will not be factored into determining a reduction in the forgiveness amount.

An eligible borrower **must apply** for forgiveness at the end of the Relevant Period following the procedures set forth in the CARES Act. Lenders will have 60 days after the date on which a lender receives an application for loan forgiveness to issue a decision on the application. Forgiven amounts otherwise includible in the borrower's gross income by reason of forgiveness will be excluded from gross income under the CARES Act.