

The professionals at Cook Martin Poulson are ready, willing and able to assist businesses with understanding the Paycheck Protection Plan and to take advantage of funds made available through the CARES Act.

On March 27, 2020, President Trump signed Coronavirus Aid, Relief, and Economic Security Act (CARES Act), aimed at providing financial relief American businesses in response to the economic fallout from the fast-developing coronavirus (COVID-19) pandemic. The measure provides direct financial aid to American families by providing payroll and operating expense support for small businesses, and loan assistance.

One of the core components of the CARES Act is the provision of \$349 billion for small businesses through federally backed loans under a modified and expanded Small Business Administration (SBA) 7(a) loan guaranty program called the Paycheck Protection Program. The Act is designed to make funds available to qualifying businesses quickly through approved banks and nonbank lenders for immediate support and assistance as a result of the Coronavirus (COVID-19) pandemic.

KEY POINTS

Under the CARES Act, qualifying businesses include;

- Businesses with up to 500 employees or which meet the applicable size standard for the industry as provided by SBA's existing regulations
- Qualified self-employed businesses
- Businesses in the accommodation and food services industries with more than one physical location but no more than 500 employees at each location
- Nonprofit organizations
- Eligible independent contractors and sole proprietors.

Where will the funds be available?

Loans will be available through SBA and Treasury approved banks, credit unions, and some nonbank lenders.

How much can I borrow?

Borrowers can borrow 2.5 times their average monthly payroll expenses from the previous 12-month period, up to \$10 million.

Self-employed borrowers can borrow net earnings from self-employment or similar compensation, no more than \$100,000 in 1 year, as prorated for the covered period;

Applicable uses for the loan proceeds include: 75% for qualified payroll costs; and 25% for rent; utilities; and interest on mortgage and other debt obligations.

Loan forgiveness is available for funds used to pay payroll and other qualified expenses eight weeks from the date of the origination of a covered loan.

What businesses qualify for the Paycheck Protection Program?

- Generally, any business in operation on February 15, 2020 with no more than 500 employees is eligible.
 - This includes small businesses, as well as qualified nonprofit organizations, sole proprietorships, independent contractors, and self-employed individuals.
- A business in the accommodation and food services industry with more than one physical location qualifies if it employs no more than 500 employees at each location.
- For purposes of eligibility, the SBA's affiliate rules are waived for businesses in the hospitality and restaurant industries, franchises approved on the SBA's Franchise Directory, and small businesses that receive financing through the Small Business Investment Company program.

What is the maximum loan amount that can be received through the Paycheck Protection Program?

A borrower can receive the lower of \$10 million or the product of 2.5 times the average total monthly payroll costs for the prior 12 months. Seasonal employers will use the 12-week period beginning February 15, 2019 or eligible seasonal employers can make an election to use March 1, 2019 to June 30, 2019. If the business was not in operation from February 15, 2019 to June 30, 2019, then the business will use the average monthly payroll from January 1, 2020 to February 29, 2020.

Self-employed borrowers will be eligible to borrow their average monthly income plus employee average monthly payroll costs.

What can a business use Program funds for?

Businesses can use funds from Program loans to cover expenses including:

- 75% for
 - a. Payroll costs, including compensation to employees; payments for vacation, parental, family, medical or sick leave; severance payments; payments required for group health care benefits (including insurance premiums), retirement benefits, and state and local employment, and the sums payments to or income of a sole proprietorship or independent contract that is a wage, commission, income, net earnings from self-employment.
- 25% for
 - a. Interest payments on any mortgage obligations or other debt obligations incurred before February 15, 2020 (but **not** principal payments or prepayments of principal)
 - b. Rent
 - c. Utilities
- The funds **cannot** be used for compensation of individual employees, independent contractors, or sole proprietors in excess of an annual compensation of \$100,000; or any compensation for employees with their principal place of residence outside the United States; or leave wages already covered by the Families First Coronavirus Response Act.

How are loans made under this Program different from traditional 7(a) loans?

- Unlike traditional SBA 7(a) loans, **no** personal guarantee will be required to receive funds and there will be **no** collateral requirements. Similarly, the CARES Act waives the requirement that a business needs to show that it cannot obtain credit elsewhere.
- In lieu of these requirements, borrowers must **certify** that the loan is necessary due to the uncertainty of current economic conditions; that they will use the funds to retain workers, maintain payroll, or pay rent, mortgage, and utility payments; and that they are not receiving duplicate funds for the same costs.
- Payments of principal, interest, and fees will be deferred for at least 6 months, but not more than 1 year. Term on loan is 2 years from funding. Interest rates are capped at 1%. The SBA will not collect any yearly or guarantee fees for the loan, and all prepayment penalties are waived.
- The SBA has **no recourse** against any borrower for non-payment of the loan, except where the borrower has used the loan proceeds for a non-allowable purpose.

Under Certain Conditions Borrowers Can Qualify for Loan Forgiveness

- Borrowers are eligible for loan forgiveness if they used the loan proceeds for 75% for payroll costs, and the remaining 25% for rent payments, utility payments, or mortgage interest payments for 8 weeks from inception date.
 - Eligible payroll costs can not include annual compensation greater than \$100,000 for individual employees.
- The amount of loan forgiveness can be reduced if the employer reduces the number of employees as compared to the prior year, or if the employer reduces the pay of any employee by more than 25% as of the last calendar quarter. Employers who re-hire workers previously laid off as a result of the COVID-19 crisis will not be penalized for having a reduced payroll for the beginning of the relevant period. Forgiveness may also include additional wages paid to tipped workers.
- Borrowers must apply for loan forgiveness to their lenders by submitting required documentation (as discussed in further detail below) and will receive a decision within 60 days.
- If a balance remains after the borrower receives loan forgiveness, the outstanding loan will have a maximum maturity date of 2 years after the funding of the loan.

Taxability of Loan Forgiveness

- The amount of debt forgiven for a covered loan as part of the Paycheck Protection Program shall be excluded from gross income.

How does a business apply for a loan under the Paycheck Protection Program?

- Additional guidance from the SBA regarding how to apply for Program loans, including additional resources on the SBA website about how to find a qualified lender. Borrowers who have outstanding SBA loans may also want to contact their existing lenders to inquire about applying for loans under the Program. <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>

Does the CARES Act affect any other loans available to small businesses?

- Yes. The maximum loan amount for an Express Loan is increased from \$350,000 to \$1 million.

- The CARES Act also expands eligibility for borrowers applying for an Emergency Economic Injury Disaster Loan (EIDL) grant. Under the Act, emergency EIDLs are available for businesses or cooperatives with fewer than 500 employees, sole proprietors or independent contractors, or Employee Stock Ownership Plans (ESOPs) with fewer than 500 employees. Additionally, the Act waives requirements that (1) the borrower provide a personal guarantee for loans up to \$200,000, (2) that the eligible business be in operation for one year prior to the disaster, and (3) that the borrower be unable to obtain credit elsewhere. The SBA is also empowered to approve applicants for small-dollar loans solely based on their credit score or "alternative appropriate methods to determine an applicant's ability to repay."
- Most significantly for borrowers seeking an immediate influx of funds, borrowers may receive a \$10,000 emergency advance within three days after applying for an EIDL grant. If the application is denied, the applicant is not required to repay the \$10,000 advance. Emergency advance funds can be used for payroll costs, increased material costs, rent or mortgage payments, or for repaying obligations that cannot be met due to revenue losses.
- Borrowers may apply for an EIDL grant in addition to a loan under the Paycheck Protection Program, provided the loans are not used for the same purpose. If a borrower received a loan under 7(b)(2) after January 31, 2020, the borrower may refinance the outstanding balance as part of a loan under the Program.

Is relief available for businesses with pre-existing SBA loans?

- Yes. The SBA will pay the principal, interest, and associated fees on certain pre-existing SBA loans for 6 months.

Which lenders may process, close, disburse, or service loans made under the Paycheck Protection Program?

- To participate in the Paycheck Protection Program, lenders must be either SBA Qualified Lenders—those already deemed qualified under section 7(a)—or Additional Lenders—those insured depository institutions, insured credit unions, and other lenders that the Administrator and Secretary of the Treasury determine are qualified pursuant to paragraph (36) (together, Program Lenders).

How much of the loan will the SBA guarantee under the Paycheck Protection Program?

- The SBA will guarantee (through deferred participation) 100 percent of any covered loan made under the Program during the covered period. This is a substantial increase from the 75 percent guarantee against traditional SBA loans made under section 7(a).

What due diligence must Program lenders conduct prior to extending loans under the Program?

- Prior to the extension of any loan under the Program, the Program Lender must evaluate the eligibility of each borrower that applies for a covered loan. Under the Program, a Program Lender must consider whether the applicant:
- Was in operation on February 15, 2020; and
- Had employees for whom the borrower paid salaries and payroll taxes, or paid independent contractors, as reported on a Form 1099-MISC.

- Is a sole proprietorship or an independent contractor. (must document with payroll tax filings, forms 1099-MISC and income and expenses from the sole proprietorship as determined by the Administrator and the Secretary)

What are the terms and conditions of Program loans?

- SBA guarantees 100% of loan
- No Collateral will be required
- No Personal Guarantees will be required
- Interest 1%
- Loan term 2 years with a 6 month payment deferral

What documents must a lender require to offer a borrower loan forgiveness?

- As discussed above, loan forgiveness is available for 8 weeks of payroll costs, mortgage interest or rent payments, and utility payments. To be eligible to receive loan forgiveness, a borrower must submit a complete application to the lender containing the following required documents:
 - Documentation verifying the number of full-time equivalent employees on payroll and pay rates for pre- and post-covered periods, including payroll tax filings reported to the IRS and state income, payroll, and unemployment insurance filings;
 - Documentation such as cancelled checks verifying mortgage interest, lease, and utility payments;
 - Certification from a representative of the recipient that (a) the documentation presented is true and correct, and (b) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation or make covered utility payments; and
 - Any other documentation the SBA deems necessary.

For more information and help navigating the Payroll Protection Plan and any other CAREs Act provisions please contact the professionals at Cook Martin Poulson at 801-467-4450 for the Salt Lake City office or for the 435-750-5566 Logan office or by visiting our website at www.cookmartin.com.