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Paycheck Protection Program Under the CARES Act

April 7, 2020



Reminders

- Slides and recording will be circulated to all attendees after the presentation.
- If you have any questions during this webinar, please submit them through the Q&A box.
- We will attempt to answer questions submitted during this webinar that are not answered during the webinar in a FAQ sheet that will be distributed with the slides and recording.
- For anything else, please email wbdus_covid19@wbd-us.com or your WBD contact person.

Presenters



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Basics

- Paycheck Protection Program loans are part of the CARES Act
- Expands on existing SBA 7(a) infrastructure
- Available to wide range of businesses
- Intended to allow businesses to keep employees and meet existing payment obligations during uncertain times
- Other relief may also be available under the CARES Act



Various Other Programs Under the CARES Act

Economic Injury Disaster Loans

- For qualifying small businesses and nonprofits impacted by COVID-19
- Up to \$2M loan amount; up to 30 years maturity
- Interest rate of 2.75% for nonprofits; 3.75% for small businesses
- Requires credit underwriting, collateral and personal guarantees
- Generally not forgivable, but one-time \$10,000 emergency grant at time of application available

Loans for Larger Businesses

- \$500B fund intended for targeted lending to distressed sectors
- Treasury has wide discretion
- May include loans, guarantees or even investments
- Criteria to be determined
- Limits on compensation, stock buybacks, dividends and capital distributions apply

Certain Tax Credits and Deferrals

- Filing and payment deadlines delayed to July 15, 2020
- Employer portion of payroll taxes may be deferred to 2021 and 2022 (but not if you take a PPP loan)
- Employee retention tax credit of 50% up to \$10,000 per employee on wages paid between March and December for fully or partially suspended due to COVID-19 businesses (but not if you take a PPP loan)
- NOL changes and others



Who Can Be a Borrower?

- Business must have been in operation as of February 15, 2020 and either had employees or independent contractors
- “Small business concern” as defined in Small Business Act
- Any business, 501(c)(3) non-profit, veterans’ organization or Tribal business concern with 500 or fewer employees in the US
 - Full-time and part-time employees included
 - Uncertainty about whether to include 1099 independent contractors that work for businesses
 - Uncertainty about whether to include affiliates for purposes of employee count

Who Can Be a Borrower? Cont.

- Some businesses may have more than 500 employees if they are in an industry (based on NAICS code) that has an SBA-employee-based size standard greater than 500
- Businesses in food services/hospitality industry (with NAICS code 72), has multiple physical locations and employs fewer than 500 employees per location
- Sole proprietors and self-employed individuals



Who Cannot Be a Borrower?

- Businesses ineligible for SBA loans generally (other than non-profits), including:
 - Financial businesses primarily engaged in lending
 - Passive businesses owned by developers and landlords
 - Life insurance companies
 - Businesses engaged in illegal activities
- Subject to change

Do Affiliation Rules Apply?

- Probably yes, SBA affiliation rules will apply to most businesses, but interpretations vary
- Express waiver:
 - for businesses in accommodation and food service business
 - for franchises
 - for faith-based organizations
- Impacts VC and PE backed companies



What Are the Affiliation Rules?

- Categories of Affiliates
 - based on ownership – 50%+ equity ownership or ability to prevent quorum or block action by board or SHs
 - based on management
 - based on identity of interest
- Stock options, convertible securities and agreements to merge treated as though current rights

What Are the Terms of a PPP Loan?

- Maximum loan amount is \$10 million, with each borrower's actual loan size based on a formula regarding their payroll costs. For most, the loan amount will be the lesser of: (a) \$10 million; and (b) 2.5 times the average total monthly payroll costs incurred in the one-year period before the loan is made
- Interest rate of 1% according to latest guidance from SBA (but has changed in the past)
- Maturity of 2 years with no prepayment fees/penalties
- Repayment deferred for 6 months from date of disbursement of loan, but interest accrues over this period

Can I apply for More Than 1 PPP Loan?

- No
- Apply for maximum amount for which you are eligible
- Application requires certification that borrower has not and will not receive another loan under PPP



What Can Proceeds Be Used For?

- Allowed Uses include:
 - Payroll Costs (described in more detail next)
 - Mortgage Interest Payments
 - Rent/Lease Payments
 - Utility Payments
 - Interest Payments on Debt
- Mortgage, lease, utilities and debt must be in existence as of February 15, 2020
- 75% of proceeds must be used for payroll related expenses



What Are Payroll Costs?

- Payroll Costs include:
 - Salaries (up to \$100,000 annualized rate per employee)
 - Hourly wages
 - Commissions
 - Cash Tips
 - Benefits like sick leave, vacation, medical leave, group health insurance, payment of retirement benefits
- Expressly **excludes**: cash compensation in excess of \$100,000 per employee on annual basis; federal income tax, FICA, non-US employee payroll, qualified medical/sick leave for Covid-19 and certain income earned by sole proprietors and independent contractors

Eligible Uses Cont.

- Funds used for allowable purposes will be eligible for forgiveness once proper documentation of the expenses has been provided to the lender
 - Keep good records of the proceeds of the loan – perhaps even use a separate bank account
- If funds are used for unauthorized purposes, SBA will require repayment of those amounts
- If funds are used for fraudulent purposes, the government may pursue criminal charges



Under What Circumstances Are Loans Forgiven?

- Borrowers are eligible for loan forgiveness equal to the amount spent during an eight-week period after the origination date of the loan on qualified uses, but no more than 25% of the loan forgiveness amount may be attributable to non-payroll costs (or flipped, at least 75% of the amount to be forgiven must be spent on payroll costs)
- Additional guidance on forgiveness expected
- Forgiven amount does not count as taxable income

How May Forgiveness Amount Be Reduced?

Reduction in FTEs

- Compare average # of FTE employees during 8-week period after loan origination to average # of FTE employees per month during either (a) February 15, 2019 – June 30, 2019 or (b) January 1, 2020 – February 29, 2020

Reduction in Salaries

- If salaries reduced during 8-week period after loan origination by more than 25% of total salary during most recent full quarter during which employee was employed before the 8-week period
- Limited to employees making less than \$100,000

What If I Already Laid Off Employees?

- To encourage employers to rehire employees, borrowers are not penalized for having reduced employment or salary levels for any changes made between February 15, 2020 and April 26, 2020, so long as levels are restored by June 30, 2020

What is the Process to Obtain Forgiveness?

- Request forgiveness from lender
 - Must include documents verifying number of FTEs and pay rates, and payments of mortgage, lease, and utility obligations
 - Must certify documents as true and that loan proceeds used to keep employees and make eligible payments for mortgage, lease and utility obligations
- Lender must decide within 60 days after request

What Happens to Any Portion Not Forgiven?

- Ongoing loan obligation
- Repaid with interest of 1%
- Matures 2 years after issuance
- Payments deferred for first 6 months, but interest continues to accrue



Application Process

- Where do I apply?
- When can I apply?
- Any fees, personal guarantees, collateral required?
- What information is needed to apply?

Where do I apply?

- Approved SBA Section 7(a) program lender – there's a list on the SBA's website
- Participating:
 - Federally insured depository institution
 - Federally insured credit union
 - Farm Credit System Institution
- Other lenders can be added to the program
- Recommendation: Work with existing lenders

When can I apply?

- Small businesses and sole proprietorships can apply for loans starting on Friday, April 3
- Starting April 10, independent contractors and self-employed individuals can apply, according to the Treasury guidelines
- Loans will be given on a first-come, first-served basis
- Recommendation: Move Fast



Any fees, personal guarantees, collateral required?

- No fees for these loan applications
 - The SBA has waived all typically applicable 7(a) fees for the loan
- Do not require collateral
- Do not require personal guarantees

What information is needed to apply?

- Application (form available at: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>, but lenders may adjust or use online format, so go through lender)
 - 20%+ owner disclosure
 - Affiliates
 - Certifications
- Payroll documentation
- KYC requirements and other bank requests

How to Calculate Loan Amount To Request?

Step 1: Aggregate payroll costs (as discussed previously) from the last twelve months/2019 for employees whose principal place of residence is the United States.

Step 2: Subtract any compensation paid to an employee in excess of an annual salary of \$100,000.

Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid).

Disclosure of 20%+ Owners

Applicant Ownership

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

Disclosure of Affiliates and Other Questions

Question	Yes	No
1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

Other Questions

Question	Yes	No
<p>5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?</p> <p>Initial here to confirm your response to question 5 → <input type="text"/></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?</p> <p>Initial here to confirm your response to question 6 → <input type="text"/></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory?</p>	<input type="checkbox"/>	<input type="checkbox"/>

Certifications

By Signing Below, You Make the Following Representations, Authorizations, and Certifications

CERTIFICATIONS AND AUTHORIZATIONS

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

Certifications, Cont.

CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

- The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
- The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.
- The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.
- I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.
- During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.
- I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Take-Aways

- Unclear when funds will be made available
- Move Quickly
- Work with existing lenders
- Don't let the perfect be the enemy of the good
- Disclose how you are calculating if there are questions
- Additional guidance may come
- Lenders given wide discretion, so follow their lead
- We are here to help – call with questions



Thank You / Q&A



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