

Your Small Business May Be Eligible to Participate in the SBA Paycheck Protection Program

Coronavirus Legal Advisory

04.06.2020

Related People:

Howard M. Berkower
Danielle Weslock

We can guide you through the process in which the government will fund your payroll and other operating costs for eight weeks.

Under the U.S. Small Business Administration's ("SBA") Paycheck Protection Program ("PPP"), eligible small businesses may borrow up to 250% of their average monthly payroll costs from most banks and certain other SBA-approved financial institutions.

Qualified loan recipients are eligible for loan forgiveness, up to the total loan amount, for loan proceeds used to pay payroll costs, rent, utilities and certain other operating-related expenses ("Qualified Expenses") during the eight-week period following the disbursement of the loan ("Forgiveness Period"). The government essentially funds 100% of an eligible business' payroll and other operating expenses for the Forgiveness Period so that the loan essentially becomes an outright grant. Small businesses should contact their banks or their local [Small Business Development Center](#) to find an approved SBA or Department of Treasury lender.

Eligible Businesses

Small businesses, nonprofits and 501(c)(19) veteran organizations, including religious organizations, self-employed individuals operating as sole proprietors and independent contractors with less than 500 employees, are eligible to apply for a PPP loan. Businesses with more than 500 employees may also be eligible for a PPP loan if the number of employees meets the applicable size standard for the industry as established by the SBA. The employees of certain affiliates are required to be included in the calculation of the total number of employees of a "small business." These aggregation rules are particularly complex for any business successful enough to attract investment from venture capital and growth funds. For our latest thinking on how these aggregation rules affect businesses whose equity owners include venture capital and private equity funds, click [here](#). In addition, restaurants, hotels and businesses that fall within the North American Industry Classification System ("NAICS") code 72 are further benefitted by a waiver from most of the affiliate aggregation rules that operate to disqualify otherwise eligible businesses.

Maximum PPP Loan Amount and Related Terms

The maximum PPP loan amount any small business is eligible to borrow is 250% of its average total monthly payroll costs incurred in the one-year period before the PPP loan is made, up to \$10

million. "Payroll costs include the sum of salaries, wages and commissions; payments for vacation, parental, family, medical or sick leave; allowance for dismissal or separation; payments required for the provisions of group health care benefits, including insurance premiums; payments of any retirement benefit; and payments of state or local tax assessed on the compensation of employees—but excludes any compensation of an employee whose principal place of residence is outside the United States. Seasonal business expenses will be measured using average monthly payroll expenses for the 12-week period starting on February 15, 2019, or March 1, 2019, whichever the seasonal business chooses. Businesses that commenced operations after June 30, 2019, can use the period from January 1 to February 29, 2020, to measure average monthly payroll costs. It is anticipated that 90% or more of the principal amount of PPP loans will be forgiven. Payments on any remaining principal outstanding, including principal, interest and fees, are deferred for at least six months and up to one year from the original date of the PPP loan. The interest rate on PPP loans has been set at 1%, and the loan will have a two-year maturity. In addition, unlike other SBA loan, PPP loans do not require any collateral or personal guaranty of the owners of the small business.

Use of Proceeds and Terms of PPP Loan Forgiveness

Qualifying businesses will be eligible for loan forgiveness if all employees are kept on the payroll during the Forgiveness Period and the loan proceeds are used for Qualified Expenses incurred during the Forgiveness Period. No more than 25% of the forgiven amount may be for non-payroll costs. Documentation showing payroll, rent, mortgage and utility expenses is required to receive loan forgiveness. PPP loans can also be used for other business-related expenses; however, they will not be forgiven. PPP loan forgiveness will additionally be reduced (a) in proportion to the decrease in the average monthly full-time equivalent employees ("FTEE") during the Forgiveness Period to the FTEE of selected reference period and (b) in proportion to the amount of reduction in total employee salary and wages reduced during the Forgiveness Period. Notwithstanding, qualifying businesses that rehire laid-off workers by June 30, 2020, will not be penalized for having a smaller workforce during the start of the Forgiveness Period.

Applying for a PPP Loan

PPP loan applications may be submitted online to an existing SBA lender. Existing SBA-certified lenders have authority to approve and make PPP loans. The PPP loan program is available through June 30, 2020; however, small businesses are encouraged to submit their PPP loan application promptly.

The PPP loan application form can be downloaded [here](#).

Small businesses applying for PPP loans should assemble the following:

1. Articles of Incorporation/Formation Documents;
2. State income, payroll and unemployment insurance filings;
3. Annual profit and loss statement;
4. Mortgage and rent statements;
5. Utility statements;
6. Federal tax return of the business and owners of the business with 20% or greater ownership stakes;
7. Documents reflecting the number of employees;
8. Documents showing payroll costs for the Forgiveness Period;
9. Documents showing mortgage interest payments for the Forgiveness Period;

10. Documents showing rent payments for the Forgiveness Period;
11. Documents showing utilities for the Forgiveness Period; and
12. A certified statement that the amount of forgiveness was required to retain employees or meet the covered obligations.

McCarter & English, LLP can assist you with determining whether you are eligible for a PPP loan, completing the loan application, gathering the documentation necessary to be provided to the lender after the application has been submitted and gathering the documentation needed to demonstrate your entitlement to have up to the entire principal amount of the loan forgiven.