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Paycheck Protection Program Summary

Part of the CARES ACT (Coronavirus Aid, Relief, and Economic Security Act)
Enacted Friday, March 27, 2020

Date this White Paper was Last Updated: March 28, 2020

Summary: Private lenders are offering Small Business Administration (SBA) low interest loans requiring no collateral, no personal guarantees, 6 month to 1 year payment deferrals, and substantial loan forgiveness, which makes the loans wholly or partially “free money” in a sense. The program is funded with 350 Billion Dollars offered on a first come, first serve basis. The last date for loans is June 30, 2020, but the money may be gone before the end of June.

Who is Eligible for the Loans?

Businesses, tax exempt 501(c) non-profits, veterans organizations, and Tribal businesses with either:

- (a) Fewer than 500 employees, or
- (b) Otherwise meet size standards as a small business in their industry¹

Sole proprietorships and independent contractors are also eligible.

Hotels and restaurants may be eligible if they have fewer than 500 employees per each physical location even if the business owner employs more than 500 employees total.

Franchisees are not rendered ineligible due to their affiliation with a larger franchise.

Each business must have been in business as of February 15, 2020, and either paid employees or 1099 workers.

What is the Maximum Amount of the Loan per Business?

The lesser of:

- (a) \$10,000,000, or
- (b) The average monthly payroll costs incurred in the 1 year period before the loan is made
TIMES 2.5²

¹ See the SBA industry standards list.

² The loan amount may be greater for businesses who wish to refinance into this loan a previously qualifying SBA loan made after January 31, 2020.

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Payroll costs include:

- Salary, wages, commissions, and “similar compensation” CAPPED at \$100,000 per worker on an annualized basis and NOT INCLUDING federal taxes/withholdings from February 15 to June 30, 2020
- Payment of cash tips or equivalent
- Payment for paid leave (vacation, sick, etc. but not payments made required by the recent the COVID-19-driven Families First paid leave law)
- Group health payments, including premiums
- Severance payments
- Retirement benefits
- State or local payroll tax (typically not an issue in Florida)

Payroll costs also include:

- Compensation to or income received by a sole proprietorship or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation, but CAPPED at no more than \$100,000 in 1 year as prorated between February 15, 2020, and June 30, 2020.

NOTE: Seasonal employers, instead of looking back a year from the loan date, look to payroll for the 12 weeks prior to February 15, 2020, or may elect March 1, 2019, to June 3, 2019

How can Businesses Spend the Loan Funds?

- Payroll costs as defined above
- Group health premiums
- Group health benefits when a worker is on paid sick, medical, or family leave
- Interest on mortgages obtained prior to February 15, 2020 (not principal payments)
- Rent
- Utilities (electricity, gas, water, phone, internet, transportation)
- Interest on debt obligations if the debt was taken out prior to February 15, 2020
- Refinancing of qualifying SBA loans taken out after January 31, 2020

What are some of the key features of the loan program?

- Complete loan payment deferral for at least 6 months, but not more than 1 year
- No personal guarantees
- No collateral

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- No recourse against any individual shareholder, member, or partner for loan nonpayment unless such individual used the loan proceeds for an unauthorized purpose
- No SBA fees
- No requirement that credit cannot be obtained from another source
- No prepayment penalty
- Interest rate not to exceed 4% for any balance remaining after loan forgiveness with a maximum maturity date of 10 years

What Certifications Must the Borrower Make to Qualify?

- (1) The uncertainty of current economic conditions makes necessary the loan request to support ongoing operations.
- (2) Loan funds will be use to retain workers and maintain payroll, or make mortgage, rent, or utility payments.
- (3) There is no duplicative loan application or loan under this program.

What Amount of the Loan Will Be Forgiven?

Generally, payments made during the 8 weeks following loan origination for the following will be forgiven (with no imputed income to the borrower):

- Payroll costs as defined above
- Interest on mortgage obtained prior to February 15, 2020
- Rent (unless obligation began after February 15, 2020)
- Utilities (electricity, gas, water, phone, internet, transportation)

Special Rules (And Reductions) on Forgiveness:

- (1) Loan forgiveness cannot exceed the amount of the loan.
- (2) Unless the business qualifies for the exception described in “(4)” below, forgiveness is reduced according to the formula below if **Full Time Equivalent (FTE’s)** have been reduced:

[Amounts paid during the 8 weeks after loan origination]

×

[Avg. # of FTE's during the 8 weeks after loan origination]

[Avg. FTE per month from EITHER 2 – 15 – 19 to 6 – 30 – 19 or from 1 – 1 – 20 to 2 – 29 – 20]

Note: FTEs are calculated by determining the FTE's for each pay period falling within a month. FTEs are calculated by dividing the work hours for the employees by the total hours in the pay period (e.g., 160 hours worked/40 hour work week = 4 FTEs)

- (3) Unless the business qualifies for the exception described in “(4)” below, forgiveness is reduced according to this formula for reduced salaries/wages:

[Amounts paid during the 8 weeks after loan origination]
MINUS

[Dollar amount by which employees' compensation (excluding any employees paid more than \$100,000 on an annualized basis) was reduced by more than 25% from the most recent full quarter prior to the loan origination]

- (4) The exception to reductions for reduced FTE's and reduced salaries/wages is as follows:

If, when compared to FTE's and salaries as of February 15, 2020, there is a reduction in FTE's and/or salaries between February 15, 2020, and April 26, 2020, to the extent that the business eliminates the reduction by June 30, 2020, the loan forgiveness will not be affected. In other words, reductions in FTE's and salaries from February 15 to April 26 will not reduce the forgiven amount if the employer eliminates the reductions by June 30, 2020.

- (5) Businesses who pay tipped employees may receive forgiveness for additional wages paid to those employees. [This likely means payment to tipped employees to restore their pay to February 15, 2020, levels, but regulatory guidance is needed for this one particularly]

What Documentation Do Borrowers Need to Support the Forgiveness?

- (1) Documents verifying # of FTE's to complete the formula described above: FTE's during the 8 weeks' following loan origination; FTE's between either 2-15-19 and 6-30-19 or between 1-1-20 and 2-29-20; FTE's between 2-15-20 and 4-26-20; and, if FTE's are being restored by June 30, 2020, documentation the FTE's were restored by 6-30-20. This documentation should include payroll tax filings, and state income, payroll, and unemployment filings, as applicable.
- (2) Documents verifying salaries/wages for the 8 week period following the loan origination; as of February 15, 2020; for the most recent full quarter prior to loan origination; and, if salaries/wages are being restored by June 30, 2020, documentation of the restored

salaries/wages. This documentation should include payroll tax filings, and state income, payroll, and unemployment filings, as applicable.

- (3) Documents verifying payment of mortgage interest, rent, and utilities during the 8 weeks following loan origination.
- (4) A certification by the borrower that the documentation presented is true and that the payments for forgiveness were made for authorized reasons.

Are there timing concerns?

The final date to apply for a loan is June 30, 2020, but the loans are first come, first served and there is no guarantee that funds will still be available through that date.

Your “place in line” for the money may be based on the SBA loan origination date, which is likely the date that the lender submits the loan application to the SBA.

Lenders are required to make a decision on loans within 60 days of the loan application.

Regulations/official guidance will be issued for this loan program, and it is currently unknown whether lenders will be waiting for this guidance before submitting loan applications.

Do businesses have to use a particular lender?

No. Borrowers may use any lender authorized to make these loans, which will be almost all lenders. Currently, it is unknown if different lenders will offer more competitive terms than others (such as interest rates lower than 4% or longer payment deferral than 6 months).