Paycheck Protection Program

Part of the CARES ACT (Coronavirus Aid, Relief, and Economic Security Act)

Enacted Friday, March 27, 2020

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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[1], or
(b) Otherwise meet size standards as a small business in their industry[2]

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 must have paid at least one employee. 1099 workers do not count as employees. 1099 workers can individually apply for their own PPP loan if otherwise eligible.

Various exclusions exist for a limited set of businesses (such as those engaged in illegal activity, legal gambling, strip clubs, etc.). Additionally, a business who has an owner, officer, director, or key employee who is incarcerated, on probation or parole, subject to current criminal charges, or who has defaulted on a SBA loan in the last 7 years causing a loss to the government may be excluded from participation.

[1] Employees who do not reside in the United States are excluded.
[2] Attached is the SBA industry standards list.

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 2.5[3]

Payroll costs include:

- Salary, wages, commissions, and "similar compensation" CAPPED at $100,000 per worker on an annualized basis and NOT INCLUDING federal employment taxes imposed or withheld between February 15 and June 30, 2020, and NOT INCLUDING income taxes required to be withheld from employees
- 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)

[3] 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.

- 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

<u>What are some of the key features of the loan program?</u>

- Interest rate is 1.00%
- Loan term is 2 years
- Complete loan payment deferral for 6 months, although interest will accrue during the 6 months
- No personal guarantees
- No collateral
- 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
- Only one PPP loan may be taken by each eligible entity

<u>What Certifications Must the Borrower Make to Qualify?</u>

- The borrower was in operation on February 15, 2020, and had employees for which payroll taxes were made or paid 1099 workers
- The uncertainty of current economic conditions makes necessary the loan request to support ongoing operations.
- Loan funds will be use to retain workers and maintain payroll, or make mortgage, rent, or utility payments, where no more than 25% of loan proceeds may be used for non-payroll costs.
- There is no duplicative loan application or loan under this program.
- The information in the application is true, etc.
- Acknowledgement that the lender will confirm eligible loan amounts using tax documents that are identical to those submitted to the IRS, etc.

<u>What Amount of the Loan Will Be Forgiven?</u>

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 must be at least 75% of the forgiven amount
- 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 <u>cannot</u> 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 Equivalents (FTE’s)** have been reduced:

$$\frac{[Amounts\ paid\ during\ the\ 8\ weeks\ after\ loan\ origination] \times [Avg.\#\ of\ FTE's\ during\ the\ 8\ weeks\ after\ loan\ origination]}{[Avg. FTE\ per\ month\ from\ EITHER\ 2-15-19\ to\ 6-30-19\ or\ from\ 1-1-20\ to\ 2-29-20\ ]}$$

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.

What Documentation Do Borrowers Need to Support the Forgiveness?

The particular documentation will depend on instructions from the lender, but, generally, the following may be needed:

(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.

Do businesses have to use a particular lender?

No. Borrowers may use any lender authorized to make these loans.