

Keeping American Workers Paid and Employed – Paycheck Protection Program

Articles, COVID 19: Answers to Business Challenges March 29, 2020

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was signed into law by the President on March 27, 2020, and in doing so the largest stimulus and relief package in the history of our country has been made available to small businesses across our great nation. There are now a number of avenues of relief available to small business through programs administered by the Small Business Administration (SBA). One of those programs is the Paycheck Protection Program detailed in Title 1 of the CARES Act, which we will focus on below.

Generally, under the Paycheck Protection Program, businesses that employ less than 500 employees (along with sole proprietorships, independent contractors and self-employed individuals) are eligible for special low-interest loans for amount up to 2.5 times their monthly payroll to cover their major operating expenses (wages, rent, mortgage interest, utility payments), which will be forgiven if the businesses do not cut their payroll (i.e., cut hours or eliminate positions).

WHO IS ELIGIBLE?

- Businesses that employ not more than 500 employees or other standard established by the Administration for a particular industry, nonprofit organization, veterans organization or Tribal business
- Businesses with more than one location and more than 500 employees, but (i) that does not employ more than 500 at any one location and (ii) the business' primary NAICS code starts with "72" (Accommodation and Food Services)
- In addition, individuals who operate under sole proprietorships, independent contractors and other self-employed individuals are eligible to receive a covered loan
- To be eligible the business must make a good faith certification to the effect:
 - That the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient
 - Funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments
 - No application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan
 - During the period beginning on February 15, 2020 and ending on December 31, 2020, that the business has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan

WHAT CAN THE LOANS BE USED FOR?

- Payroll costs
- Costs related to the continuation of group health care benefits
- Employees salaries, commissions or similar compensation
- Payment of interest on mortgage obligations (but not including payment of principal)
- Rent
- Utilities
- Interest on other debt obligations that were incurred before the covered date

HOW MUCH ARE YOU ELIGIBLE FOR?

- Generally, 2.5 times borrower's monthly payroll costs. Specifically, the Maximum Loan Amount is determined by the following formula:
 - The lesser of: (1) \$10,000,000; and (2) average monthly payments for payroll costs for the year before the loan is made (Pre-COVID-19) multiplied by 2.5 plus the outstanding amount of a loan that was made after January 31, 2020 under the Economic Injury Disaster Loan (EIDL) Program

IS THERE DEBT FORGIVENESS?

- Amounts paid to cover payroll, mortgage interest, rent, and utility payments shall be forgiven. These amounts shall be considered canceled indebtedness by a lender authorized under Section 7(a) of the Small Business Act
- The compensation of an individual employee in excess of an annual salary of \$100,000 is excluded from the definition of payroll costs

WHAT ELSE DO I NEED TO KNOW?

- Maximum interest rate of 4%
- No personal guarantee shall be required for a covered loan
- No collateral shall be required for the covered loan
- No prepayment penalty for any payment made on a covered loan
- The requirement that a small business concern is unable to obtain credit elsewhere, shall not apply to a covered loan
- The SBA shall not collect any fees on the loans
- Loan will be made by SBA approved delegated authority lenders; there will be no separate SBA approval required
- Deferred payments of 6-12 months
- Loans shall be non-recourse with respect to any individual shareholder, member or partner or an eligible borrower, except to the extent that the loan proceeds are misused

For additional information contact Barry Nelson.