Paycheck Protection Program

Businesses that qualify for the Paycheck Protection Program

The bill provides that any business in operation on February 15, 2020, with no more than 500 employees (or which meets the applicable size standard for the industry as provided by SBA's existing regulations) is eligible. This includes small businesses, as well as qualified nonprofit organizations, sole proprietorships, independent contractors, and self-employed individuals. A business in the accommodation and food services industry with more than one physical location qualifies if it employs no more than 500 employees at each location.

The maximum loan amount that a business can receive through the Paycheck Protection Program?

Each business can receive the lesser of $10 million or the sum of two and one-half times the average total monthly payroll costs for the prior year.

Permitted uses of Program funds

Businesses can use funds from the Program loans to cover expenses including:

- Payroll costs, including compensation to employees; payments for vacation, parental, family, medical, or sick leave; severance payments; and payments required for group health care benefits (including insurance premiums), retirement benefits, and state and local employment taxes.
- Interest payments on any mortgage obligations or other debt obligations incurred before February 15, 2020 (but not any payments or prepayments of principal).
- Rent.
- Utilities.

A business cannot use the Program loans for compensation of individual employees, independent contractors, or sole proprietors in excess of an annual salary of $100,000, compensation of employees with a principal place of residence outside the United States, or leave wages already covered by the Families First Coronavirus Response Act.

Differences between loans made under this Program and under traditional 7(a) loans

Unlike traditional SBA 7(a) loans, no personal guarantee will be required to receive funds and no collateral needs to be pledged. The CARES Act also waives the requirement that a business show that it cannot obtain credit elsewhere. In lieu of these requirements, a borrower must certify that the loan is necessary due to the uncertainty of current economic conditions, that it will use the funds to retain workers, maintain payroll, or make lease, mortgage, and utility payments, and that it is not receiving duplicative funds for the same uses.

Payments of principal, interest, and fees will be deferred for at least six months, but not more than one year. Interest rates are capped at four percent. The SBA will not collect any yearly or guarantee fees for the loan and all prepayment penalties are waived.

The SBA has no recourse against any borrower for nonpayment of the loan, except where the borrower has used the loan proceeds for a non-allowable purpose.

Loan forgiveness requirements

Borrowers are eligible for loan forgiveness for eight weeks commencing from origination date of the loan for payroll costs and rent payments, utility payments, or mortgage interest payments.

The amount of loan forgiveness may be reduced if the employer reduces the number of employees as compared to the prior year, or if the employer reduces the pay of any employee by more than 25% as of the last calendar quarter. Employers who re-hire workers previously laid off as a result of the COVID-19 crisis will not be penalized for having a reduced payroll for the beginning of the relevant period. Forgiveness may also include additional wages paid to tipped workers.

Borrowers must apply for loan forgiveness to their lenders by submitting required documentation and will receive a decision within sixty days.

If a balance remains after the borrower receives loan forgiveness, the outstanding loan will have a maximum maturity date of ten years after the application for loan forgiveness.

Applications for loans under the Paycheck Protection Program

The SBA will provide additional guidance concerning how to apply for Program loans, including additional resources on the SBA website about how to find a qualified lender. A borrowers who wishes to obtain a loan may wish to contact its existing lenders to inquire about applying for a loan under the Program.

Other loans available to small businesses

The CARES Act affects other loans available to small business. The maximum loan amount for an Express Loan is increased from $350,000 to $1,000,000.

The CARES Act also expands eligibility for borrowers applying for an Emergency Economic Injury Disaster Loan (EIDL) grant. Under the CARES Act, emergency EIDLs are available for businesses or cooperatives with fewer than 500 employees, sole proprietors or independent contractors, or employee stock ownership plan-owned businesses (ESOPs) with fewer than 500 employees. The CARES Act waives requirements that (1) the borrower provide a personal guarantee for loans up to $200,000, (2) that the eligible business be in operation for one year prior to the disaster, and (3) that the borrower be unable to obtain credit elsewhere. The SBA is empowered to approve applicants for small-dollar loans solely on the basis of their credit score or "alternative appropriate methods to determine an applicant's ability to repay."

For a borrower seeking an immediate influx of funds, that borrower may receive a $10,000 emergency advance within three days after applying for an EIDL grant. If the application is denied, the applicant is not required to repay the $10,000 advance. Emergency advance funds can be used for payroll costs, increased material costs, rent or mortgage payments, or for repaying obligations that cannot be met due to revenue losses.

Borrowers may apply for an EIDL grant in addition to a loan under the Paycheck Protection Program, provided the loans are not used for the same purpose. If a borrower received a loan under 7(b)(2) after January 31, 2020, the borrower may refinance the outstanding balance as part of a loan under the Program.