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Paycheck Protection Program Loan

Insight — 06/23/2020

The Paycheck Protection Program loan is a forgivable loan for small businesses designed to incentivize businesses to retain their workers. The loan is administered by the Small Business Administration (SBA) and guaranteed by the SBA.

Loan Forgiveness Criteria

- Loan proceeds must be used to cover payroll costs, mortgage interest, rent, and utility costs over the 8-week period after the loan is made. At least 75% of loan proceeds must be used for payroll costs and the remaining 25% of loan proceeds can be used for other allowable uses (i.e., mortgage interest, rent, utility costs). Furthermore, PPP loan proceeds may only be used for U.S. workers and operations.
- Loan forgiveness is reduced if you decrease the number of full-time employees. However, a business's loan forgiveness amount will not be reduced if the business laid off a full-time employee and offered to rehire the same employee (for the same salary/wages and same number of hours), but the employee declined the offer for rehire.
- Employee salary and wages must be maintained. Loan forgiveness will also be reduced if salaries and wages are decreased by more than 25% for any employee that made less than $100,000 annualized in 2019.
- By June 30, 2020 the full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020 must be restored.

Loan Forgiveness Tax Implications

Small businesses whose PPP loans are forgiven may not deduct the payroll costs, rents, and other expenses that resulted in the loan forgiveness.

Maximum Loan Amount

- The lesser of $10 million or 2.5 times the average monthly payroll in the 12 months preceding the loan. For seasonal employers, the 12-week period beginning February 15, 2019, or from March 1, 2019 to June 30, 2019. For new employers, January 1, 2020 to February 29, 2020.

Eligibility

Three methods of eligibility:

- Any business concern, nonprofit organization, veterans organization or Tribal business that employ less than 500 employees, as well as any sole proprietorships, independent contractors and eligible self-employed individuals;
- Meeting the size standard set by the SBA; or
- Meeting both tests in the SBA's "Alternative Size Standard" as of March 27, 2020.

For purposes of determining the number of employees, the term "employee" includes those employed on a full-time, part-time, or other basis. Also applies to accommodation and food services businesses with 500 or fewer employees per physical location. All businesses must have been operational on February 15, 2020. Moreover, the number of employees also includes affiliated employees.

SBA Affiliation Rules

To determine a business's eligibility for a PPP loan using the employee headcount or average annual revenue tests, a business must count both its average annual receipts or employees (as the case may be) and those of all of its domestic and foreign affiliates. Generally, affiliation exists when one business controls or has the power to control another business or when a third-party business controls or has the power to control both businesses. Control arises through ownership, management, or other relationships between the businesses. Some examples of affiliation include:

- Affiliation through ownership
- Affiliation based on management
- Affiliation based on identity of interest

If your company is a parent or a subsidiary of another company, or if its management controls other entities, then your company likely has affiliates. This means that in addition to counting the number of employees or annual receipts in your business, you also need to count the employees or annual receipts of each affiliate. Ultimately, PPP eligibility and affiliation rules can be complex.

Covered Loan Period

February 15, 2020 to June 30, 2020.

Use of Loan Proceeds

Loan proceeds may be used to pay for payroll costs, costs related to the continuation of group health care benefits, mortgage payments, rent, utilities, and interest on any other debt obligations that were incurred before February 15, 2020.

Payroll costs include:

- Salary, wages, commissions, or tips (capped at $100,000 on annualized basis for each employee)
- Benefits costs including, vacation, parental, family, medical, or sick leave; group health care, including insurance premiums; retirement benefit payments, and separation or dismissal allowances
- State and local taxes assessed on compensation
- Excludes payments to independent contractors and qualified sick and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act. FFCRA tax credit information can be found here.

Certification

When applying, the applicant must certify:

- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the SBA and at the time the loan is funded.
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees after application of the SBA's affiliation rules or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- That the information provided in the application and the information provided in all supporting documents and forms is true and accurate in all material respects.
- In good faith, that the PPP loan is necessary—"taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business."
- To an understanding that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to $250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than $5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than $1,000,000.

Loan Particulars (for that portion of the loan not forgiven)

- Payment of principal, interest, and fees deferred for 6 months - 1 year.
- Loan is amortized over 2 years at a 1.00% fixed rate.
- No prepayment penalty, personal guaranty or collateral required.
- Unless the loan proceeds are used for a non-authorized purpose, the SBA has no recourse to the shareholders, members or partners of the business for nonpayment of the loan.

Applying for a PPP Loan

Eligible businesses can apply for the PPP loan at any lending institution that is approved to participate in the program through the existing U.S. Small Business Administration SBA 7(a) lending program. Applicants are eligible to apply for the loan until June 30, 2020.

SBA Express Loan

An SBA Express Loan is a financing option that was available to small and medium size business owners prior to enactment of the CARES Act. The CARES Act simply revises the loan terms so that through December 31, 2020, the maximum amount that may be borrowed is increased from $350,000 to $1,000,000.

Economic Injury Disaster Loan

The Economic Injury Disaster Loan (EIDL) expands the existing EIDL loan program under the SBA.

Maximum Loan Amount

Capped at $2 million.

Eligibility

“Small business concerns” who are currently eligible under original EIDL program, any business, cooperative, Employee Stock Ownership Plan (ESOP) or tribal business concern with fewer than 500 employees, private nonprofit organizations, small agricultural cooperatives, and individuals who operate as a sole proprietorship or an independent contractor with or without employees.

Covered Loan Period

January 31, 2020 to December 31, 2020

Use of Loan Proceeds

Loan proceeds can be used to provide sick leave to employees unable to work due to COVID-19, payroll, increased material costs due to interrupted supply chains, rent or mortgage payments, repaying obligations that cannot be met due to revenue losses.

Emergency Advance

Borrowers who need an immediate influx of funds may request an emergency advance up to $10,000 within three days after the SBA receives the application. If the application is denied, the borrower is not required to repay the $10,000 advance.

Loan Particulars

- No personal guarantee required on advances and loans of not more than $200,000.

- No requirement that the applicant be in business for the one-year period before the disaster, so long as the business was in operation on January 31, 2020.
- No requirement that the applicant be unable to obtain credit elsewhere.
- Applicants may be approved based solely on credit score, and no tax return required.

Applying for EIDL Loan

Apply here.

Frequently Asked Questions

May businesses borrow under both loan programs?

Yes. Borrowers may apply for an EIDL loan in addition to a loan under the Paycheck Protection Program, provided the loans are not used for the same purpose.

What if I have an existing SBA loan? Will it be impacted by the CARES Act?

Yes. For any SBA-guaranteed Section 7(a) loans (other than PPP Loans) in regular servicing status made before the CARES Act was enacted, or during the six-month period after enactment, the SBA will pay all scheduled principal, interest and fees due during such period. Your payments will resume after the six- month period ends, but you will not be responsible to the lender or the SBA for the principal, interest or fees scheduled to be paid during the subsidy period and paid by the SBA.

I own a large or medium-sized business such that I don't qualify for the stimulus loans described above. Does the CARES Act provide assistance for me?

As the owner of a large business (a business with greater than 10,000 employees) or a medium-sized business (501-10,000 employees), your business could qualify for Economic Stabilization and Assistance Loans or loan guarantees. These are loans or loan guarantees made or facilitated, or debt securities purchased by the Department of the Treasury to support passenger and cargo air carriers as well as other United States businesses that have not otherwise received adequate economic relief through loans and loan guarantees under the CARES Act.

For a large business, qualifying for this type of loan requires a determination by the Treasury Department that, among other things: (a) credit from other sources is not reasonably available to the applicant; (b) the loan or loan guaranty is sufficiently secured or is made at risk-appropriate, market rates; (c) the duration of the loan or loan guarantee is as short as practicable and in no event longer than five (5) years; (d) the applicant will not use the funds to repurchase equity investment while the loan or loan guaranty is outstanding; and (e) the business maintains its existing employment levels as of March 13, 2020.

For mid-sized businesses, the CARES Act sets up a program for the Department of the Treasury to provide financing to banks and other lenders to then make direct loans to eligible mid-sized businesses and nonprofit organizations. The interest rate is capped at 2% per annum. For the first six months after disbursement (or longer if determined by the Treasury Department), no principal or interest is due and payable. A medium-sized business applicant must make good faith certifications that:

1. uncertain economic conditions make the loan necessary to support the recipient's ongoing operations;
2. loan proceeds will be used to retain at least 90% of the recipient's workforce, at full compensation and benefits, through September 30, 2020;
3. the recipient intends to restore at least 90% of its workforce that existed as of February 1, 2020, and to restore all compensation and benefits to its workers no later than four months after the termination of the COVID-19 emergency declared by the Department of Health and Human Services;
4. the recipient is domiciled in the United States with significant operations and employees in the United States;
5. the recipient is not a debtor in a bankruptcy proceeding;
6. the recipient is incorporated or organized within the United States and has significant operations in and a majority of its employees in the United States;
7. the recipient will not pay dividends to its stockholders (or, presumably, distributions to members or partners) or repurchase any equity security of the recipient or its parent that is listed on a securities exchange while the loan is outstanding, except to the extent required under a contractual obligation in effect before the CARES Act is enacted;
8. the recipient will not outsource or offshore jobs for the term of the loan and for two years after completing repayment of the loan;
9. the recipient will not abrogate existing collective bargaining agreements for the term of the loan and for two years after completing repayment; and the recipient will remain neutral in any union organizing effort for the term of the loan.

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depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.