

Small Business Administration Clarifies Many CARES Act Questions

As many are preparing to submit applications for Small Business Administration (SBA) loans under the [Paycheck Protection Program](#) in the CARES Act (the “Program”), the SBA has released guidance in the form of an [“Interim Final Rule.”](#)

While our analysis of the rule is continuing and will be further refined, we believe that the below important points are time-sensitive, as the application process goes live today:

Are payments to independent contractors included in the calculation of an applicant’s “payroll costs”?

No. This was a point of considerable debate, but the SBA has clarified that independent contractors have the ability to apply for a loan on their own so they do not count for purposes of a borrower’s loan calculation.

What is the measurement period for “payroll costs”?

The SBA appears to have clarified that the measurement period used to calculate the maximum loan amount shall be based on payroll costs in calendar year 2019. This is consistent with prior application guidance from the SBA but a bit at odds with the text of the CARES Act which referenced the “1-year period before the date on which the loan is made.” (Note that the measurement period will be different for seasonal or new businesses.)

Is there additional clarity regarding the “affiliation rules”?

No. But the SBA “intends to promptly issue additional guidance with regard to the applicability of the affiliation rules.”

What is the interest rate of an SBA loan under the Program?

100 basis points, or 1%

What is the term of the loan?

Two years

What is the deferral period for repayment of loans under the Program?

Six months

What percentage of the loan may be spent on non-payroll costs for purposes of loan forgiveness?

While there is no limit in the CARES Act itself, the SBA stated that “not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs.”

What happens if loan proceeds are used for unauthorized purposes?

SBA will require repayment of the loan (rather than forgiveness), unless the unauthorized use was “knowing.” In such cases, there will be additional liability, including fraud charges. Notably, if a borrower’s shareholders, members, or partners use funds for unauthorized purposes, the SBA will have recourse against those individuals.

What documentation is required?

In addition to the loan application ([new version available here](#)) and its required certifications, the SBA is requiring lenders to review payroll documentation demonstrating employees on the payroll and amounts paid as payroll costs.

We will continue to monitor SBA’s additional guidance as it is released. Please contact [Jim Catanzaro](#), [Justin Furrow](#), or your relationship attorney if you have questions or need additional information.

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