

Update on the Paycheck Protection Program

On March 31, 2020, the Treasury Department and Small Business Administration (SBA) released guidance for prospective borrowers and lenders under the Paycheck Protection Program (the "Program") created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and issued a sample loan application. Click the [link for the sample loan application](#). Beginning April 3, 2020, small businesses and sole proprietorships can apply for loans under the Program. Independent contractors and self-employed individuals can apply beginning April 10, 2020. To participate, a business must complete and submit the application, along with the required documentation, to an approved lender. **It is imperative that applications be submitted as soon as possible.**

The Program provides loans of up to \$10 million to businesses that meet certain maximum size requirements (based on employee count). Loan proceeds may be used to fund payroll costs (including benefits), rent obligations, mortgage interest payments, and utilities. The principal balance of a loan under the Program may be forgiven if certain conditions are met.

The key aspects of the Program are summarized below:

Eligible Businesses:

Generally, any business operating as of February 15, 2020, with 500 or fewer employees is eligible to participate. Additionally, a limited number of businesses with more than 500 employees may be eligible if they operate in certain industries. For most businesses, the number of employees will be calculated on a combined basis with all of the applicant's "affiliates," although this requirement is waived for (a) businesses in the hospitality and restaurant industries, (b) certain franchises and (c) businesses receiving financial assistance from small business investment companies licensed by the SBA.

Maximum Borrowable Amount:

The maximum loan amount will be the lesser of (a) \$10 million and (b) an amount equal to 2.5 times the applicant's average monthly "payroll costs" during calendar year 2019.

"Payroll costs" include salaries, wages, leave payments, severance payments, payments of group health benefits (including insurance premiums) and retirement benefits, and payments of compensation-related state and local taxes, but exclude (a) wages or salary in excess of \$100,000 for any individual (on an annual basis, subject to proration), (b) Social Security, Medicare, and income withholding taxes, (c) compensation paid to residents of foreign countries and (d) wages in respect of sick leave or family leave for which a credit is allowed under the Families First Coronavirus Response Act.

Other Eligibility Requirements:

To apply for a loan, a business must make certain certifications, which are set forth in the application.

Permitted Uses of Loan Proceeds:

Loan proceeds may be used for payroll costs (including benefits), mortgage interest (but not principal), rent and utilities.

Loan Terms:

All loans will have the following terms:

- Interest rate of 0.5%
- Maturity of 2 years
- Deferral of first payment for 6 months
- 100% guarantee by SBA
- No collateral or personal guaranties are required
- No borrower or lender fees are payable to SBA

Loan Forgiveness:

Loans will be forgiven if the proceeds are used for payroll costs (subject to the \$100,000 annual wage/salary cap for each employee), mortgage interest payments, lease payments, and utility payments during the eight-week period after the loan is made, but at least 75% of the forgiven amount must be used for payroll. The amount forgiven will be reduced:

- proportionately for any reduction in full-time or equivalent employees during the eight weeks following loan disbursement, as compared to the average number of employees employed per month during the period of either (a) February 15, 2019 to June 30, 2019, or (b) January 1, 2020 to February 29, 2020 (whichever period the business chooses), and
- by the percentage of any reduction in total salary or wages paid during the eight-week period to employees who earned less than \$100,000 during 2019, but only to the extent such reduction is greater than 25%.

To further incentivize employers to rehire employees and reverse pay reductions, the amount forgiven will not be reduced by any terminations or pay reductions made between February 15, 2020, and April 26, 2020, if those job losses or pay reductions are reversed by June 30, 2020.

Participating Lenders:

Lenders who are already qualified to make loans under Section 7(a) of the Small Business Act can elect to participate in the Program. Additionally, the Act directs the Treasury Department to publish criteria for participation by other lenders not already participating in SBA loan programs in order to expand the universe of available lenders.

Act Quickly:

A maximum amount of \$349 billion has been allocated to the Program, and loans will be made on a first-come, first-served basis. **To participate, businesses should be prepared to quickly submit an application.** Businesses with existing credit facilities should contact their current lenders to ensure they will be participating in the Program and to seek further information about the process. Our Chambliss team continues to monitor legal developments related to the CARES Act and other legislation related to the COVID-19 public health crisis.

Our Chambliss team continues to monitor legal developments related to the CARES Act and other legislation related to the COVID-19 public health crisis. Please contact [Mark Turner](#), [Jason Mirmelstein](#), or your relationship attorney regarding specific questions related to the Paycheck Protection Program.

Visit our COVID-19 Insight Center for our latest legislative and legal updates, articles, and resources.

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