

Paycheck Protection Program Begins April 3

The Coronavirus Aid, Relief and Economic Security (CARES) Act created a new Paycheck Protection Program designed to encourage employers to retain employment and compensation levels. Small Business Administration participating lenders may start accepting applications from small businesses and sole proprietorships on **Friday, April 3**. Participating lenders may start accepting applications from independent contractors and self-employed individuals on **April 10, 2020**. Other lenders will be allowed to accept applications when they are approved and enrolled in the program. The program ends June 30, 2020.

On Tuesday, March 31, the SBA issued the application form and borrower and lender information sheets for the program. For additional information and an outline of the program under the Act, see our previous Alert “Summary and Analysis of the CARES Act.”

Here is an outline of the program, as implemented:

Maximum loan amount is 2.5 times average monthly payroll costs. Payroll costs include (i) salary, wages, commissions, and tips (capped at \$100,000 annualized), (ii) employee benefits and retirement benefits, and (iii) state and local taxes on compensation. Proceeds may be used for payroll costs, rent, utilities, and interest on certain debt incurred before February 15, 2020. No more than 25 percent of loan proceeds may be used for non-payroll costs, due to expected high demand.

All payments are deferred for six months. The Act authorized 6-12 months. All loans will be for two years at a 0.5 percent interest rate. The Act authorized up to 10 years and up to 4 percent interest. Loans can be prepaid without penalty.

Loan forgiveness is based on use of proceeds for eligible purposes during the eight weeks following the making of the loan. The forgiveness amount is reduced for decreases in full-time staff or more than 25 percent reductions in salary levels. However, the borrower has until June 30 to restore full-time employment and salary levels for changes made between February 15 and April 26. Forgiveness is requested by submitting documentation to the lender.

SBA confirms the statutory waiver of affiliation rules for hotel and food service borrowers (NAICS Code 72), SBA-approved franchises, and borrowers that receive financial assistance from registered small business investment companies. SBA also confirms the statutory waiver of collateral, personal guarantees, and the “credit elsewhere” requirement.

Applicants are to submit the two-page application form and documentation of payroll to the lender. The instructions to the application says most companies will use 2019 payroll, which should make it easier for applicants, although the Act refers to the year before making the loan. In practice we are seeing lenders ask for the year before the loan. Lenders are also asking for additional information in some cases, including tax returns for previous years.

The borrower must certify (i) current economic uncertainty makes the loan necessary to support ongoing operations, (ii) funds will be used to retain workers and pay other eligible costs, (iii) the applicant has not received other funds under the program, (iv) applicant will provide lender with documentation relating to use of proceeds, (v) the information in the application and related documentation is true and accurate, and (vi) applicant acknowledges the lender will calculate the eligible loan amount using the documentation from the applicant, that tax documents are identical to those submitted to the IRS and may be shared with the SBA.

A sample of the application is [available here](#). However, it is still marked “Sample” and may be subject to change. The information sheet for borrowers is [here](#).



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