



Paycheck Protection Program

Helpful Information

The releases do provide answers to several common questions among applicants, including:

- Applications can start April 3rd for small business and sole proprietorships. Applications for independent contractors and self-employed can start April 10th.
- The overview corroborates that the timing of getting your application in will be important.
- Payroll costs included in the maximum loan are capped at \$100,000 per employee on an annualized basis (e.g. \$8,333.33 per month). You can include payroll costs for employees that receive compensation in excess of this, but their compensation is capped. Compensation includes benefit costs, and not just salary or wages for those individual employees.
- Terms of the loan, for those portions not forgivable, will be the same for all loans under the program and will provide:
 - 0.50% interest rate, fixed
 - 2 year term (after the 6 month deferment)

Requirements or Additional Restrictions

The package of documents made available reiterate requirements covered in the CARES Act, but appear to include aspects or requirements of the PPP loan that were not addressed by the CARES Act. In particular, note:

- There is a suggestion that only 25% of the loan may be used for non-payroll costs in order for those non-payroll costs to be forgiven. Those non-payroll costs would include items such as compensation in excess of the \$100,000 annualized amounts paid to employees (e.g., \$8,333.33 per month), rent, mortgage interest and utilities.
- The applicant will be required to make representations, including:
 - Loan proceeds will be used only for the business related purposes in the program.
 - To the extent feasible, the applicant will purchase only American-made equipment and products.
- The application process requires several certifications, including from the applicant and any 20% stakeholder of the applicant:
 - Current economic uncertainty makes the loan necessary to support your ongoing operations.
 - The funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments.
 - Applicant has not and will not receive another loan under this program.
 - Applicant will provide to the lender documentation that verifies the number of full-time equivalent employees on payroll and the dollar amounts of payroll



costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight weeks after getting this loan.

- Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.
- All the information provided in the application and in all supporting documents and forms is true and accurate. Knowingly making a false statement to get a loan under this program is punishable by law.
- Applicant acknowledges that the lender will calculate the eligible loan amount using the tax documents you submitted. Those tax documents are affirmed to be identical to those submitted to the IRS. The lender can share the tax information with the SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Key Questions Remaining

More guidance is likely to be forthcoming from the SBA, and in the meantime, here are some of the areas still ripe for clarification or answers:

- Affiliation Issues - PE/VC Portfolio Companies: Whether there will be any relief from the affiliation rules for portfolio companies of private equity or venture capital groups remains a question.
- Affiliation Issues – Franchises: The CARES Act's waiver of the affiliation issues for businesses that are franchises in the SBA's Franchise Directory is holding as advertised for affiliation issues between the franchisor and the franchisee. The CARES Act's relief also appears to waive affiliation rules for the franchisee as it relates to its other affiliates that might be under common control with another group. Will there be any change to this scope of the waiver in further guidance from the SBA?
- 25% Rule: Is the limitation on use of the loan for non-payroll costs supported by the CARES Act and a permissible limitation?

If you need help navigating the Paycheck Protection Program, please contact a member of Hill Ward Henderson's [COVID-19 Attorney Response Team](#) below:

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