

## The CARES Act: Resources for Small Businesses and Nonprofit Organizations Impacted by the COVID-19 Crisis

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H.R. 748, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law on March 27, 2020. The CARES Act provides emergency assistance for individuals, families, businesses, and nonprofit organizations affected by the novel coronavirus pandemic (“COVID-19”). While the CARES Act includes multiple COVID-19 relief efforts, this update provides an overview of the new Paycheck Protection Program (“PPP”) and changes to the Small Business Administration’s (“SBA”) existing Economic Injury Disaster Loan (“EIDL”) Program.

### *The Paycheck Protection Program (Secs. 1102, 1106)*

The PPP authorizes up to \$349 billion in forgivable loans to eligible small businesses and nonprofits to cover up to eight weeks of payroll and certain operating expenses. Up to 100% of the principal amount of PPP loans will be forgiven if the funds are used for qualified purposes. Implementing regulations are expected to be published by the SBA on or before April 27, 2020.

#### A. Eligibility Requirements

All businesses and nonprofits that were in operation as of February 15, 2020, and that have fewer than 500 employees are eligible to apply for a PPP loan, including 501(c)(19) veterans organizations and tribal businesses. Sole proprietorships, independent contractors, and self-employed persons are also eligible. For certain industries, businesses can have more than 500 employees, if they meet size standards established by the SBA for the industry in which the business operates.<sup>1</sup> Unlike other SBA programs, there are no personal guarantee or collateral requirements and applicants need not establish they are unable to obtain credit elsewhere.

#### B. Authorized Uses of PPP Loans

The PPP covers up to eight weeks of payroll and other expenses incurred between February 15, 2020 and June 30, 2020, including:

- Employee salaries (not exceeding \$100,000 annualized per employee), commission payments, and other payroll costs,<sup>2</sup> including benefits;
- Costs related to group health care benefits and insurance premiums;
- Mortgage interest payments (excluding prepayments);
- Rent and utilities; and
- Interest on any other debt obligations that were incurred before February 15, 2020.

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<sup>1</sup> Any business operating within the restaurant and hospitality industries (under a North American Industry Classification System (NAICS) code beginning with 72), and having not more than 500 employees per physical location of the business, are also eligible.

<sup>2</sup> The definition of “payroll costs” excludes paid-sick and paid-family leave payments made pursuant to the new Families First Coronavirus Response Act (FFCRA).

Employers may not take out PPP, EIDL, or other SBA loans for the same purposes.

C. Maximum Funding Limits

Loan amounts are capped at 2.5 times an employer's average monthly payroll expense from the prior year, up to a total of \$10 million. For seasonal employers, average monthly payroll can be calculated using a 12-week period beginning either February 15, 2019 or March 1, 2019, and ending June 30, 2019. Initial guidance from the SBA states that PPP loans will have a 0.5% fixed interest rate, and repayment will be deferred for at least six months and up to one year.

D. How to Apply for a PPP Loan

Qualified businesses and nonprofits can apply for a PPP loan beginning April 3, 2020 and independent contractors and self-employed persons can apply beginning April 10, 2020. All applications must be received by June 30, 2020. Applications will be accepted by any existing SBA lender or through any participating federally insured depository institution, federally insured credit union, and Farm Credit System institution. As part of the PPP application, borrowers are required to certify that (1) the need for the PPP loan is based on the uncertainty of current economic conditions, (2) the funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments, and (3) that the applicant has not applied for or received funds under the PPP or other SBA loan program for the same purposes.

[Additional instructions](#) and the PPP application are available on the SBA website.

E. How to Request Loan Forgiveness

To request forgiveness of a PPP loan, employers can submit a request directly to the lender that is servicing the loan.

During the eight-week period after the PPP loan is funded, all loan amounts spent on qualified expenses will be forgiven, so long as the employer does not reduce its full-time staff or reduce wages by more than 25%. In the event of layoffs, the amount of eligible loan forgiveness will be reduced in an amount proportionate to the reduction in the number of employees and/or to reductions in wages. However, employers have until June 30, 2020, to restore any changes to their full-time employment and salary levels made between February 15, 2020 and April 26, 2020. All qualified expenses must be adequately documented and the maximum forgiveness amount cannot exceed the principal borrowed. Finally, not more than 25% of the forgiven amount may be used for non-payroll costs, such as mortgage interest, rent or utilities.

***The Economic Injury Disaster Loan Program (Sec. 1110)***

The CARES Act also expanded the SBA's EIDL program, which provides loans to small businesses, nonprofits, sole proprietorships and independent contractors in amounts up to \$2 million. Unlike the PPP loans which are accessed through participating lenders, EIDL loans are provided directly by the SBA. EIDL loans are based on an applicant's actual economic injury as determined by the SBA, and may be used for

payroll and other increased costs or obligations resulting from business disruption. EIDL applicants can request an advance of up to \$10,000 to pay qualified expenses, which the SBA anticipates paying within three days of the application. EIDL advances operate as grants and are generally not required to be repaid, even if the loan application is ultimately denied. However, the amount of the advance will be deducted from any loan forgiveness amounts under a PPP loan.

Additional information and EIDL program applications are available [here](#).

If you have any questions regarding this information, please contact us. Additional COVID-19 resources are available on our website at <https://www.pacificallawgroup.com/>.

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