



SPIRITUS LAW

SBA Paycheck Protection Program

The CARES Act provides \$349 billion in immediate funds to the Small Business Administration for the creation of a new Paycheck Protection Loan product within the SBA's 7(a) Loan Program. These funds will back loans to be made by existing SBA lenders and new lenders through the new Paycheck Protection Loan Program. The new Paycheck Protection Loans will be available to qualifying businesses (businesses with 500 employees or less) whose business operations have been interrupted by the COVID-19 pandemic.

Each qualifying business will be eligible for a loan in an amount not to exceed the lesser of (i) \$10 million or (ii) an amount equal to 2.5 times the average total monthly payroll costs.

Small businesses in the hospitality and food industry with less than \$500 million in gross receipts and more than one physical location may also be eligible for loans at each location if the number of employees at such location is less than 500. And, franchisees at the store or location level will be eligible for loans if the franchisor is in the SBA National Franchise Directory. Sole proprietors, independent contractors, and eligible self-employed individuals are also eligible to receive loans.

Costs paid by the borrower that can be applied for purposes of loan forgiveness are: (i) payroll costs; (ii) any payments of interest on mortgage obligations existing before February 15, 2020; (iii) any rent payments on leases existing before February 15, 2020, and (iv) any utility payments for utilities that were being provided as of February 15, 2020.

The Act amends the Small Business Act (the "SBA") 7(a) loan program to include a new guaranteed, unsecured loan program (the "Paycheck Protection Program") to help fund operational costs of eligible businesses, organizations and self-employed persons during the COVID-19 pandemic. Congress appropriated \$349 billion for guaranteed, low-interest, no-fee loans under the Program, with repayment deferred for at least six months. The Program also permits loan forgiveness up to 100% of the loan principal amount, subject to employment-number and compensation-level requirements.

Paycheck Protection Program Details:

1. The loan program covers businesses with up to 500 employees.
2. Eligible employees include full-time, part-time or other hires.
3. Businesses with more than 500 employees and one physical location (hospitality / food service) are eligible for the loan program, provided that they do not have more than 500 employees per physical location.
4. Sole proprietorships, independent contractors and self-employed individuals may also apply subject to certain additional documentation requirements.

5. Loans cover the period between February 15, 2020 through June 30, 2020.
6. The maximum loan amount is \$10 million.
7. The formula for determining the size of the loan for a particular borrower is tied to payroll costs of the business.
8. Funds may be used to cover payroll costs; continuation of healthcare benefits during paid sick, medical or family leave; insurance premiums; mortgage interest payments, rent and utility payments; and interest on other existing debt obligations.

Borrower Requirements:

- Borrowers must make a good-faith certification that:
 - i. the loan is necessary due to the current economic conditions caused by COVID-19,
 - ii. they will use the funds to retain workers and maintain payroll, lease and utility payments and.
 - iii. they are not receiving duplicative funds for the same uses under another SBA program.
- Borrowers must maintain an average monthly number of full-time equivalent employees during the covered period that is not less than the average monthly number during a specified period prior to the COVID-19 pandemic.
- Payments will be deferred for at least six months and up to 12 months.

Loan Forgiveness:

- a. Borrowers will be eligible for loan forgiveness equal to the amount they spend during the eight-week period after the loan origination date on payroll costs, interest payments or mortgages incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020 and payment on any utility for services that began prior to February 15, 2020.
- b. Restrictions: the amount forgiven may not exceed the loan principal amount;
- c. Payroll costs for compensation above \$100,000 in wages are not eligible for loan forgiveness.
- d. Reductions: The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25% of their prior year compensation.
- e. To encourage rehiring, this forgiveness reduction will not apply if the borrower eliminates any reduction in employee number and employee salaries/wages by June 30, 2020.
- f. Federal tax effect: Forgiven loan amounts (cancelled indebtedness) are excluded from gross income for tax purposes.
- g. Any loan, or portion of a loan, that is not forgiven will have a maturity of 10 years or less, and a maximum interest rate of 4%. There will be no prepayment fees.