

COVID-19 Resource

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SBA Paycheck Protection Program Loans

Anticipated to begin on Friday, April 3, private lenders authorized by the [U.S. Small Business Administration \(“SBA”\)](#) will be taking applications for Paycheck Protection Program (“PPP”) loans, a new type of SBA 7(a) loan designed specifically to help small businesses keep their workforces employed during the COVID-19 crisis. PPP loans were created by the [Coronavirus Aid, Relief, and Economic Security Act \(“CARES Act”\)](#) which became law on March 27, 2020.

PPP loans are available to businesses with 500 or fewer employees, or certain food service businesses and hotels with 500 or fewer employees per location falling under [NAICS Code 72](#). Special recognition is due to the dedicated team at the [National Restaurant Association](#) for their tireless efforts on behalf of the hospitality industry that made this additional accommodation possible. Independent contractors and sole proprietors are also eligible for the loans.

The maximum allowable amount of a PPP loan is 2.5 times the average monthly “payroll cost” of the borrower. “Payroll costs” are defined as (i) salaries, wages, commissions, tips and compensation to independent contractors *plus* (ii) vacation, medical, parental or sick leave *plus* (iii) separation payments *plus* (iv) group healthcare insurance costs *plus* (v) retirement benefits *plus* (vi) state and local taxes. Excluded from payroll costs are (i) compensation for any employee that exceeds \$100,000, (ii) federal payroll taxes, and (iii) qualified sick leave or extended Family Medical leave now available under the Families First Coronavirus Response Act. Guidance from the SBA makes clear that when calculating payroll costs only the first \$100,000 of compensation of any employee whose total compensation exceeds \$100,000 is included, and the rest is disregarded. Commercial payroll processors like ADP have already developed a form report they can generate for clients which calculates the proper “payroll cost” pursuant to the CARES Act and PPP loan guidance.

A portion of the PPP loan is forgivable provided that it is used for certain expenses incurred by the borrower within the eight weeks immediately following loan origination. These expenses are limited to (i) payroll costs, (ii) group healthcare costs, (iii) mortgage interest, (iii) rent, (iv) utility payments, and (v) interest on certain other debts. In the case of mortgage interest, rent and interest on certain other debts, the underlying legal obligations must have been incurred before February 15, 2020 to be allowable for forgiveness. The SBA has also directed that not less than 75% of the total amount of loan forgiveness must be for payroll costs. The legislative intent of the PPP loans was to keep Americans employed. Thus, loan forgiveness decreases proportionately for any decrease in a borrower’s workforce that exceeds 25% or any reduction in a borrower’s overall payroll costs exceeding 25%. A safe harbor exists for decreases in a borrower’s workforce between February 15, 2020 and April 30, 2020 to accommodate those borrowers who have already laid off workers, provided the workforce numbers are brought back to their previous levels after April 30.

No collateral or personal guaranty is required under PPP loans. The CARES Act prescribes only two criteria as the basis for determining loan approval: (1) that the business was a going concern on February 15, 2020, and (2) that the business is responsible for compensation paid to an employee or independent contractor. Loan approval – at least in theory – is intended to be streamlined in that authorized lenders are delegated the authority to approve the loan themselves, a power historically reserved for the SBA itself.

The SBA has issued a [model application](#), although SBA authorized lenders – primarily private banks – will develop their own applications.

If you are considering applying for a PPP loan, contact your banker as soon as possible to determine your bank's process. Because of the significant demand for the loans, many banks are prioritizing current commercial customers over newcomers.

Simpson | Dattilo attorneys are working and available to assist clients and their CPAs in preparing for and applying for PPP loans during the COVID-19 crisis. Please contact us with questions about these matters, or any other matter with which we can be of assistance.

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