

# Paycheck Protection Program: Factors for Considering a Loan

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April 2, 2020

# PAYCHECK PROTECTION PROGRAM

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- What is it?
  - Paycheck Protection Program is a Small Business Interruption Loan (“Loan”) created under the CARES Act to provide a direct incentive for small businesses to keep their workers on payroll
  - Administered by the SBA and through your local lender
  - To the extent loan proceeds are used for qualified expenses, the loan is forgiven

# Paycheck Protection Program

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- Who is Eligible:
  - Employers with fewer than 500 employees or otherwise meet the SBA's employee size requirements for the employer's industry
  - 501(c)(3) entities with fewer than 500 employees
  - Independent contractors
  - Sole proprietors
  - Self-employed
  - Tribal businesses meeting SBA size standards
  - 501(c)(19) Veterans organizations meeting size standards

# Paycheck Protection Program

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- Eligibility cont. . .
  - SBA affiliation rules still apply for employers unless employer's industry is classified as one that begins with 72 under the NAICS (food service and accommodations), in which case 500 employee limitation is per location
  - Also waived for franchise operators
  - Full-time, part-time and other status employees all count as employees for purposes of the Paycheck Protection Program

# Paycheck Protection Program

- Loan Terms:
  - Term – 2 years
    - Payments deferred for six (6) months
  - Interest – 0.5% per annum
  - Principal forgiven if proceeds are used for “qualifying expenses”
    - Qualifying Expenses: Payroll costs, rent, mortgage interest and utilities
    - Payroll costs include all payroll costs including insurance premiums, wages, vacation days, sick pay (qualified leave wages and qualified sick leave wages paid under the Families First Coronavirus Response Act are not payroll costs)

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- Loan Amount:
  - 2.5x the borrower's average monthly payroll costs in 2019, not to exceed \$10,000,000 per borrower
    - Payroll costs are limited to the first \$100,000 earned by any employee
    - Qualified sick leave wages and qualified leave wages are not included in calculating payroll costs for purposes of the eligible loan amount (and not eligible as payroll costs for purposes of receiving loan forgiveness).

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- Forgivenness Terms:
  - Must use loan proceeds for the following expenses during the 8 week period commencing on the origination date of the loan:
    - Payroll costs;
    - Rent;
    - Mortgage interest; and
    - Utilities.
  - SBA advising that not more than 25% of the loan proceeds can be used for non-payroll costs

# Paycheck Protection Program

- Forgiveness amount may be reduced:
  - If employee headcount is reduced:
    - $(\text{Payroll costs} \times \text{avg. number of FTE per month during 8 week period}) / (\text{Avg. number of FTE per month from 2/15/19-6/30/19})$
  - If salaries are reduced:
    - Payroll costs – the amount of reduction in wages for employees making \$100K or less that is greater than 25% compared to most recent quarter
  - Employees making > \$100K may have wages reduced by any amount
  - If headcount reduction or payroll reduction is eliminated by 6/30/2020, full forgiveness is available



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- Treatment of Forgiveness
  - Any amount of debt forgiven which would otherwise be included in gross income as cancellation of indebtedness income (“COD”) is excluded from gross income under the Program.
  - Still have to pay interest
  - No prepayment penalty

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- Interaction with SBA Loans
  - If borrower obtained Economic Injury Disaster Loan (EIDL) between 2/15/2020 and 6/30/2020, may refinance and include it in payroll sum
  - May obtain in conjunction with other SBA loans (7(a) loan, 504 loan, microloan), but such loans may not be used for same purposes (i.e. payroll costs)

# Paycheck Protection Program

- Employee Retention Credit under CARES ACT - May an Eligible Employer receive both the Employee Retention Credit (maximum credit of \$5,000 per employee (\$10,000 in qualified wages) for period 3/12/20 to 1/1/21) and a Small Business Interruption Loan under the Paycheck Protection Program?
  - No. An Eligible Employer may not receive the Employee Retention Credit if the Eligible Employer receives a Small Business Interruption Loan under the Paycheck Protection Program.

# Paycheck Protection Program

- Interaction with Refundable Tax Credits under the Families First Coronavirus Response Act (“FFCRA”)
  - Under FFCRA, employers are eligible for a refundable tax credit for qualified sick leave wages and qualified leave wages. Hence, if an employer receives tax credits for qualified leave wages and qualified sick leave wages, those wages are not eligible as payroll costs for purposes of receiving loan forgiveness under the CARES Act.
  - IRS issued guidance last night on how to apply for refundable tax credits – Form 7200.

# Payroll Protection Program

- Under the CARES Act, employers may defer paying the employer portion of certain payroll taxes (FICA) through the end of 2020. One half of that amount is due at the end of 2021 and the other half is due at the end of 2021.
- Is Deferral available for employers receiving assistance under the Paycheck Protection Program?
- The CARES Act states that it does not apply in the case a taxpayer has debt forgiven under the Program. Does that mean it doesn't kick in until the debt is forgiven? What about in the case of payroll taxes for highly compensated individuals (over \$100,000)?

# Paycheck Protection Program

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- What should borrowers know?
  - Apply early – first come, first served
  - Apply to SBA lender
  - Limited amount of funds available (\$350B allocated)
  - Review existing loan documents for covenants that prohibit additional debt (may argue loan is actually a grant due to forgiveness)
  - Track expenditures to allow for forgiveness
    - Failure to have proper documentation may result in limitation on forgiveness

# Paycheck Protection Program

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- What should lenders know?
  - Loans are fully guaranteed by SBA
  - No guaranty fees
  - Need to verify borrower's operations and monthly payroll costs
  - Loans may be sold on secondary market
  - Processing fees available based on loan balance at time of final disbursement
  - Agent fees available paid out of lender fees

## 2

## What will lenders be LOOKING FOR?

Borrowers will need to complete the Paycheck Protection Loan Application (which is available [HERE](#)) and payroll documentation

**Lenders will also ask you for a good faith certification that:**

1. The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations
2. The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments
3. Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here
4. From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for here (Note: There is an opportunity to fold emergency loans made between Jan. 31, 2020 and the date this loan program becomes available into a new loan)

If you are an independent contractor, sole proprietor, or self-employed individual, lenders will also be looking for certain documents (final requirements will be announced by the government) such as payroll tax filings, Forms 1099-MISC, and income and expenses from the sole proprietorship.

## What lenders will NOT LOOK FOR

- That the borrower sought and was unable to obtain credit elsewhere.
- A personal guarantee is not required for the loan.
- No collateral is required for the loan.





**Paycheck Protection Program  
Application Form**

OMB Control No.: 3245-0407  
Expiration Date: 09/30/2020

<input type="checkbox"/> Non-Profit <input type="checkbox"/> Vet Org <input type="checkbox"/> Tribal <input type="checkbox"/> Ind. Cont. <input type="checkbox"/> Self Employed		DBA or Tradename if applicable	
Business Legal Name			
Business Primary Address		Business TIN (EIN, SSN)	Business Phone
			( ) -
		Primary Contact	Email Address

  

Average Monthly Payroll:	\$	X 2.5 equals Loan Amount:	\$	Number of Jobs:	
Purpose of the loan (select more than one):					
<input type="checkbox"/> Payroll <input type="checkbox"/> Rent / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain):					

**Applicant Ownership**

List all owners of Applicant with greater than 20% ownership stakes. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

*If questions (1) or (2) below are answered "Yes," the loan will not be approved.*

Question	Yes	No
1. Is the Business or any owner presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Business, any of its owners, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Business or any owner an owner of any other business or have common management with any other business? If yes, attach a listing of all Affiliates and describe the relationship as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Business received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

*Applicants who are individuals and all 20% or greater owners of the business must answer the following questions. If questions (5) or (6) are answered "Yes" or question (7) is answered "No", the loan will not be approved.*

Question	Yes	No
5. Are you presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, on probation or parole?	<input type="checkbox"/>	<input type="checkbox"/>
Initial here to confirm your response to question 5 → _____		
6. Within the last 7 years, for any felony or misdemeanor for a crime against a minor, have you: 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?	<input type="checkbox"/>	<input type="checkbox"/>
Initial here to confirm your response to question 6 → _____		
7. <input type="checkbox"/> I am a U.S. Citizen <u>OR</u> <input type="checkbox"/> I have Lawful Permanent Resident status <input type="checkbox"/> No		
Initial here to confirm your response to question 7 → _____		



Paycheck Protection Program  
Application Form

OMB Control No.: 3245-0407  
Expiration Date: 09/30/2020

**By Signing Below, You Make the Following Representations, Authorizations, and Certifications:**

REPRESENTATIONS AND AUTHORIZATIONS

I represent that:

- I have read the Statements Required by Law and Executive Order included in this form, and I understand them.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business related purposes as specified in the loan application.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.

For Applicants who are individuals and all Associates: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

CERTIFICATIONS

The Business and each 20% or greater owner must certify in good faith to all of the below by **initialing** next to each one:

- \_\_\_\_ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
- \_\_\_\_ The funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; I understand that if the funds are used for unauthorized purposes, the federal government may pursue criminal fraud charges.
- \_\_\_\_ Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender.
- \_\_\_\_ 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 twenty-five percent (25%) of the forgiven amount may be for non-payroll costs.
- \_\_\_\_ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under this program.
- \_\_\_\_ I further certify that the information provided in this application and the information that I have provided in all supporting documents and forms is true and accurate. I realize that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- \_\_\_\_ I acknowledge that the lender will calculate the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those I submitted to the IRS. I also understand, acknowledge and agree that the Lender can share the tax information with 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.

\_\_\_\_\_  
Signature of Authorized Representative of Business

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Owner of Applicant Business

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



# Paycheck Protection Program

## 3 How much can I **BORROW?**

Loans can be up to 2.5 x the borrower's average monthly payroll costs, not to exceed **\$10 million**.

## How do I calculate my average monthly **PAYROLL COSTS?**



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# Paycheck Protection Program

## INCLUDED Payroll Cost:

- 1. For Employers:** The sum of payments of any compensation with respect to employees that is a:
  - salary, wage, commission, or similar compensation;
  - payment of cash tip or equivalent;
  - payment for vacation, parental, family, medical, or sick leave
  - allowance for dismissal or separation
  - payment required for the provisions of group health care benefits, including insurance premiums
  - payment of any retirement benefit
  - payment of state or local tax assessed on the compensation of the employee
- 2. For Sole Proprietors, Independent Contractors, and Self-Employed Individuals:** The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in one year, as pro-rated for the covered period.

## EXCLUDED Payroll Cost:

1. Compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the period February 15, to June 30, 2020
2. Payroll taxes, railroad retirement taxes, and income taxes
3. Any compensation of an employee whose principal place of residence is outside of the United States
4. Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–5 127); or qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act

# Paycheck Protection Program

## NON SEASONAL EMPLOYERS:

Maximum loan =

2.5 X Average total monthly payroll costs incurred during the year prior to the loan date

***For businesses not operational in 2019:***

2.5 X Average total monthly payroll costs incurred for January and February 2020

## SEASONAL EMPLOYERS:

Maximum loan =

2.5 X Average total monthly payments for payroll costs for the 12-week period beginning February 15, 2019 or March 1, 2019 (decided by the loan recipient) and ending June 30, 2019

- Payments deferred for six months
- 0.50% fixed interest rate
- Loan is due in two years

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# Paycheck Protection Program

## Will this loan be FORGIVEN?

Borrowers are eligible to have their loans forgiven.

### How Much?

A borrower is eligible for loan forgiveness equal to the amount the borrower spent on the following items during the 8-week period beginning on the date of the origination of the loan:

- Payroll costs (using the same definition of payroll costs used to determine loan eligibility)
- Interest on the mortgage obligation incurred in the ordinary course of business
- Rent on a leasing agreement
- Payments on utilities (electricity, gas, water, transportation, telephone, or internet)
- For borrowers with tipped employees, additional wages paid to those employees

**NOTE:** The government is now advising that because of high participation, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs. The loan forgiveness cannot exceed the principal.

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# Paycheck Protection Program

## How could the forgiveness be reduced?

The amount of loan forgiveness calculated above is reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees. Specifically:

### Reduction based on reduction of number of employees



**PAYROLL COST**  
Calculated on page 2

**X**

Average Number of Full-Time Equivalent Employees (FTEs) Per Month for the 8-Weeks Beginning on Loan Origination

**÷**

#### Option 1:

Average number of FTEs per month from February 15, 2019 to June 30, 2019

#### Option 2:

Average number of FTEs per month from January 1, 2020 to February 29, 2020

#### For Seasonal Employers:

Average number of FTEs per month from February 15, 2019 to June 30, 2019

*SBA and Treasury Department. More information, including from lenders, should be available once the guidance is issued.*

### Reduction based on reduction in salaries



**PAYROLL COST**  
Calculated on page 2

**-**

For any employee who did not earn during any pay period in 2019 wages at an annualized rate more than \$100,000, the amount of any reduction in wages that is greater than 25% compared to their most recent full quarter.

## What if I bring back employees or restore wages?

Reductions in employment or wages that occur between February 15, 2020 and April 26, 2020 (as compared to February 15, 2020) shall not reduce the amount of loan forgiveness **IF** by June 30, 2020 the borrower eliminates the reduction in employees or reduction in wages.

# Questions/Comments?

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Access our complimentary COVID-19 resources at: [www.dkattorneys.com/coronavirusguidance/](http://www.dkattorneys.com/coronavirusguidance/)

