Washington Trust Bank
Member FDIC

Small Business Banking

Paycheck Protection Program Highlights CARES Act

1. Eligible entities are corporations with less than 500 employees, sole proprietors, independent contractors, self-employed individuals and 501c3 organizations that have been affected by COVID-19.
   - There are some exceptions for (a) accommodations and food services business concerns with no more than 500 employees, (b) business concerns operating as franchises, and (c) business concerns that receive funding from small business investment companies.
   - The existing SBA affiliation rules continue to apply to loans under the PPP. These affiliation rules generally aggregate the employees of companies that are under common control, and, as a result, portfolio companies controlled by private equity sponsors and other investment firms may not be eligible to participate in the program.
   - If your company or affiliate does not meet eligibility size standards, there may be other parts in the CARES Act to benefit you, not addressed here. There are also some exceptions to the SBA standards for industry sectors that often have more than 500 employees.
2. The PPP would authorize loan amounts up to the lesser of (a) $10 million or (b) 2.5 times average monthly payroll costs, plus the value of any existing EIDL (Economic Injury Disaster Loan) Emergency loan received after January 31, 2020—i.e.. PPP loans can be used to repay or refinance certain existing EIDL loans.
   - Payroll costs are defined in the CARES Act and include salaries, cash tips, leave benefits, insurance and retirement benefits. The definition excludes (a) any compensation for individual employees in excess of a salary of $100,000, as prorated for the period from February 15 to June 30, 2020, and (b) compensation paid to employees residing outside the United States.
   - For sole proprietors and independent contractors, "payroll costs" are similarly defined, and include any annual compensation, commissions or other similar payments up to $100,000, as prorated for the period from February 15 to June 30, 2020.
   - There are special provisions for seasonal businesses and businesses that were not in operation between February 15 and June 30, 2019.
3. Loan proceeds can be used for payroll support (including group health costs and insurance premiums), employee salaries, mortgage interest or rent payments, utility payments, and interest on existing debt obligations obtained prior to 2-15-20.

4. Lending is on a non-recourse basis, unless an individual member of the borrower misuses the loan proceeds.
5. The loans will be at an interest rate no higher than 4%, with all loan fees, as well as collateral and personal guarantee requirements and subsidy recoupment fees, waived, and with 100% of loans guaranteed by the federal government.
6. Lenders are required to defer payments on PPP loans for between six months and one year, with the SBA to issue deferment guidance to lenders within 30 days of enactment.
7. The portion of loans used to cover payroll, mortgage, rent or utility costs from February 15 to June 30, 2020 are eligible for forgiveness, with the forgiven amount nontaxable.
   - In order to incentivize the retention of employees at existing salaries, the amount of loan forgiveness is reduced by:
     - Any reduction in the average number of monthly full-time equivalent (FTE) employees employed by the loan recipient during the eight weeks following disbursement of the loan (the covered period) as compared to the average number of monthly FTE employees employed by the recipient during, at the recipient's election, either the period between February 15 and June 30, 2019 or the period between January 1 and February 29, 2020 (the reference period), with special rules for seasonal employers; for example, if the recipient had an average of 95 FTE employees during the covered period and an average of 100 FTE employees during the reference period, then the recipient would only be entitled to 95% of the loan forgiveness that would otherwise be available; and
     - The amount forgiven is proportionately reduced by any reduction in employee count compared to the prior year. However, borrowers that re-hire workers who they previously laid-off, will not be penalized for having reduced their workforce before receiving funding.
   - In order to incentivize the rehiring of employees and the reversal of any recent salary reductions, loan forgiveness will be determined without regard to the reduction in the number of FTEs of a loan recipient and any reduction in salary or wages of employees of a loan recipient, in each case in between February 15, 2020 and 30 days after enactment of the CARES Act, that is eliminated prior to June 30, 2020.
8. Borrowers also need to make good-faith certifications that (a) current economic uncertainty makes the loan necessary, and (b) the proceeds would be used for retaining workers, maintaining payroll or covering existing overhead costs, but would not need to show that credit was unavailable elsewhere.
9. There are detailed application and documentation requirements for borrowers seeking forgiveness, with lenders required to decide any such application within 60 days, with forgiveness capped at the amount of the loan principal. Borrowers should keep excellent records. They must provide certification that (1) the documentation is true and correct; and (2) forgiven funds were used to retain employees, make interest payments on a mortgage obligation, pay rent or pay utilities and must provide any other documentation deemed necessary by the SBA.
10. Any loan amounts not forgiven can be amortized over 10 years at a maximum rate of 4%.

<u>Subsidy and deferral for 7(a) and 504 loans:</u>

1. Existing 7a and 504 borrowers (debentures only) are eligible to have the SBA pay 6 months of principal and interest payments beginning with the next payment due.
2. If the loans are already in payment deferral, the payment of these loans will begin when the deferral ends and last for 6 months.

<u>There are many tax benefits included in the CARES Act and you should work with your accountant to determine which, if any, are beneficial for you or your business:</u>

1. Employee Retention Credit
2. Delay of Employer Payroll Taxes
3. Qualified Improvement Property (QIP, or generally interior renovations) accelerated depreciation
4. Net Operating Loss Carryback Deductibility Increase for 2018, 2019, and 2020
5. Net Interest Deduction Limitation expansion
6. Increased Charitable Contribution Deduction