

CARES Act - Paycheck Protection Program

PRACTICE AREAS

Tax

April 1, 2020

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. The CARES Act contains an unprecedented stimulus package that provides, among other things, a new \$349 billion business lending program supported by the Small Business Administration (SBA), the "Paycheck Protection Program" (PPP). Applicants for PPP loans can begin to apply on April 3, 2020 (small businesses and sole proprietorships) and April 10, 2020 (independent contractors and self-employed individuals). Note that this loan program will be open only until June 30, 2020.

Summary of Key Items of PPP Loan Program

Maximum PPP Loan Amount

Generally, the lesser of (a) 2.5 times average monthly payroll costs for the last 12 months or (b) \$10 million. Different time periods can apply for seasonal and new businesses. Payroll costs are capped at \$100,000 per employee, and only employees residing in the United States are included in payroll calculation. Other SBA loans could impact the maximum PPP loan amount.

Interest Rate on PPP Loans

1.0% fixed rate.

Maximum PPP Loan Term

2 years.

PPP Loan Prepayment

Early prepayment allowed with no penalties or fees.

Collateral Required

None.

Personal Guaranty

No personal guaranty requirement; however, PPP loan proceeds used for fraudulent purposes can result in criminal charges.

Repayments

All payments deferred for 6 months; however, interest will accrue over this period.

Forgiveness of PPP Loan

PPP loans may be forgivable if the loan amounts are used for payroll costs, mortgage interest, rent and utility payments over the 8 weeks after obtaining the loan. The amount forgiven will be impacted by, among other things, maintenance of staff and payroll. Special rules may apply with respect to tipped employees. Any forgiven amount is not included in the borrower's US federal taxable income.

Where to Apply

SBA Lender or any federally insured depository institution, federal insured credit union, and Farm Credit System institution that is participating. Other lenders may be available to make these loans in the future.

Borrower Employee Size Restrictions

All businesses with 500 or fewer employees including nonprofits, veterans' organizations, Tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors can apply. Businesses in certain industries could have different size restrictions. Unless current law is modified, employees of portfolio companies owned by a private equity fund may be required to be aggregated and attributed to each portfolio company under the "affiliations rule" creating a hurdle for a portfolio company to access the PPP loan program. The SBA's affiliation rule is waived in some instances including for certain businesses in the hotel and food services industries.

Additional Tax Considerations

A new Employee Retention Tax Credit was created by the CARES Act. Borrowing any amount pursuant to the PPP loan program makes this tax credit unavailable to a borrower. Additionally, the CARES Act also provides certain taxpayers with the ability to defer the payment of certain 2020 payroll taxes to the end of 2021 (50%) and 2022 (50%). Having any PPP loan amount forgiven eliminates a borrower's ability to utilize this payroll tax payment deferral.

Additional Information

Information regarding PPP loans is being updated frequently. The most up-to-date information regarding PPP loans can be found at www.treasury.gov, and, <https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>.

How HCVT Can Assist

HCVT can support clients through the PPP loan application process including understanding payroll-related calculations and other documentation necessary to obtain a PPP loan. After a PPP loan is obtained, HCVT is available to assist with tracking the use of loan proceeds to document the information necessary to obtain PPP loan forgiveness. Establishing a segregated account to receive the loan proceeds and pay qualifying expenses may streamline this process.

HCVT Contacts

If you would like to discuss the PPP loan program, please contact your HCVT partner.