

Paycheck Protection Program (SBA Relief Loans)

Eligibility:

- Organizations with less than 500 employees are eligible for the program
 - Definition of Employee: For purposes of determining whether a business concern employs <500 employees under clause (i)(I), the term 'employee' includes individuals employed on a full-time, part-time, or other basis.
 - Exception: any business concern that employs not more than 500 employees per physical location of the business and that is assigned an NAICS code beginning with 72 at the time of disbursement shall be eligible to receive a covered loan (NAICS code beginning with 72 is Accommodation and Food Services).
 - Affiliation: Rules to test for control that require any affiliated entities to aggregate employees for the purpose of the <500 employees test. Companies that are controlled by an investor with greater than 50% ownership or the ability to block actions as a single shareholder or board member trigger affiliation. In addition, companies with common management an agreement to merge are considered affiliated

Loan Terms and Requirements:

- No fees or prepayment penalties
- No personal guarantees
- No collateral required
- No credit elsewhere or personal resources test
- Interest rates of 1.0%
- 2-year term, with no payments for first 6 months
- If you have existing senior debt, you will likely need approval from your existing lender(s) to take on additional debt
- You will likely need approval from your board and from preferred equity holders to take on additional debt (check your LLC agreement)
- Eligible recipient applying for a covered loan shall make a good faith certification—
 - that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
 - acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
 - that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

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Loan amount and use of proceeds:

- 2.5 times the average monthly payments for payroll costs (excluding 1099s) during 2019 (except in the case of a seasonal employer); or \$10 million, whichever is less
- Payroll cost includes salary, wages, commissions or similar compensation, payment of tips or equivalent, payment for vacation or leave, allowance for dismissal or separation, payments for group health benefits including premiums, payment of any retirement benefit, and payment of state or local taxes on employee compensation (also includes employee portion of employment taxes);
- Payroll costs excludes compensation of individual employees in excess of \$100,000 (\$100K cap applies to cash comp), compensation of employees who reside outside the U.S., federal employment taxes paid by the employer, and qualified sick leave or family leave wages eligible for a credit under the FFCRA;
- Proceeds of the loan can be used for payroll costs, including paid sick, medical, or family leave, and costs related to the continuation of group health care benefits; employee salaries, commissions, or similar compensation; payments of interest on mortgage obligations (not principal payments); rent (including rent under a lease agreement); and utilities (utilities includes electricity, gas, water, transportation, telephone, or internet access).
- **Loan Forgiveness:**
 - Amount of loan forgiveness is equal to sum of the costs incurred and payments made for payroll costs, payment of interest on covered mortgage obligations, payment of covered rent obligations, and any covered utility payment in the 8 weeks following the loan disbursement (the “covered period”).
 - Costs from rent, mortgage interest and utility payments capped at 25% of total
 - Amount of loan forgiveness is reduced if the number of employees is reduced or if employee compensation is reduced by more than 25% (calculations are complex – some detail below)
 - Determining reduction in employees is done by comparing average number of FTEs per month during the 8 weeks post loan to the average number of FTEs per month for February 15, 2019 to June 30, 2019 or to the average number of FTEs per month for January 1, 2020 to February 29, 2020 (period to compare is chosen by borrower); If the ratio of FTE during 8 weeks to prior period is less than 1, the forgivable amount is reduced by the same ratio
 - If salaries are reduced by 25% or more for an individual employee during the covered period compared to the most recent quarter prior to the covered period (presumably Q1 for companies on 12/31 fiscal years), the forgivable amount is reduced by the same ration
 - **Exemption** – For any company that reduces employees or reduces employee compensation between Feb 15, 2020 and April 25, 2020, and eliminates those reductions before June 30, 2020, the reduction in loan forgiveness shall not apply and the borrower will receive full credit for the amount calculated above
 - Any loan forgiveness amount is not taxable as income