

LAW ALERT

Coronavirus Impact Updates

March 30, 2020 | www.taylorenglish.com

Coronavirus Aid, Relief, and Economic Security (CARES) Act Paycheck Protection Program and Loan Forgiveness

On March 27, 2020, the bipartisan legislation, known as the Coronavirus Aid, Relief and Economic Security (CARES) Act, was signed into law and became the third aid package from Congress in the month of March to address the growing pandemic. Section 1102 of the CARES Act created a new loan product within the Small Business Administration's 7(a) Loan Program known as the Paycheck Protection Program as discussed below.

Paycheck Protection Loans

- Both existing SBA lenders and new lenders brought into the program with the assistance of the Department of the Treasury will be able to offer Paycheck Protection Program loans to eligible small businesses.
- The new loan will be 100 percent guaranteed by the SBA and have an interest rate of four percent. The new loan will be able to cover "payroll costs," payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation); rent (including rent under a lease agreement); utilities; and interest on any other debt obligations that were incurred before February 15, 2020.
 - "Payroll Costs" expressly includes employee salaries, commissions, or similar compensations; payment of cash, tip, or equivalent; costs related to the continuation of group health care benefits, including insurance premiums; paid sick, medical, or family leave; payment of retirement benefits; payment of state or local employment taxes; payments to independent contractors as a wage, commission, or similar compensation.
 - "Payroll Costs" expressly **EXCLUDES** salary or independent contractor wages, etc. in excess of

\$100,000 annualized and amounts of qualified Sick Leave and Family Leave Tax Credits granted under the Families First Coronavirus Response Act.

- Businesses and 501(c)(3) Non-Profits with less than 500 employees will be eligible for this new loan. Additionally, sole proprietors, independent contractors, and self-employed individuals will also be eligible. Moreover, small businesses in the hospitality and food industry with more than one location could also be eligible at the store and location level if each store or location employs less than 500 workers. This means that each store location could be eligible. Lastly, if your franchisor appears in the SBA's National Franchise Directory, assistance will extend down to the franchisee at the store or location level.
- The maximum loan amount will be the lesser of \$10 million dollars or 2.5 times the average monthly "payroll costs" on the prior year's "payroll costs."
- To increase speed and turnaround time within this new loan product, all lenders will have delegated authority. Delegated authority allows the lender to process, close, and service a loan without SBA review.
- All borrower and lenders fees for Paycheck Protection loans will be waived. Additionally, the Credit Elsewhere Test, collateral requirements, and all requirements for personal guarantees will be waived.
- Built into the new Paycheck Protection loans will be automatic deferrals of principal, interest, and fees for at least six months and up to one year.
- A small business can obtain a new Paycheck Protection loan and a SBA Economic Injury Disaster Loan (EIDL) so long as they cover different items; provided, however if an advance (in the form of a non-repayable emergency grant) is provided to a borrower of an EIDL, the amount of loan forgiveness of the Paycheck Protection loan will be offset by the amount of the advance. Flexibility is granted through no prepayment penalties on either the Paycheck Protection loan or the EIDLs and a refinancing option has been included.
- All borrowers of a Paycheck Protection loan will be ineligible for the credit(s) and/or refunds provided for under Section 2301 of the CARES Act related to employee retention credits through the IRS, as well as delay or deferment of payment of employment taxes.

Loan Forgiveness

- The CARES Act also establishes a loan forgiveness tool that allows businesses that maintain payroll continuity from February 15, 2020 through June 30, 2020 as defined by headcount, to request forgiveness on a Paycheck Protection loan used on payroll costs; mortgage interest; rent; and utility payments over an eight week period after loan closing.
- The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation.
- The loan forgiveness program provides flexibility for businesses that re-hire workers that were previously laid off.
- To receive loan forgiveness, a business will submit documentation of approved uses to the lender.

Amount of loan forgiveness will **NOT** be treated as income for tax purposes

- Lenders will be held harmless on decisions of eligibility and SBA will purchase the loan after the lender grants approval.
- \$350 billion dollars will be provided for the Paycheck Protection Program and Loan Forgiveness.

Steps to Prepare for Loan Process

Specific application requirements haven't been determined yet for this program. Based on the intent of the loan and the assistance it seeks to provide, we recommend you start collecting the following documentation. US Bank has issued a pre-application that can be done online at: <https://apply.usbank.com/applications/business/InquiryForm>.

Needed to help you calculate the eligible loan amount:

- Payroll reports for 2019 and 2020 year to date showing the following by employee and/or officers:
 - Gross wages
 - Paid time off
 - Paid vacation
 - Pay for family medical leave
 - State and local taxes (form 940, 941, or 944)
 - 1099's for independent contractors (if applicable)
 - Completed 2019 tax return OR 2019 Profit and Loss Report and Balance Sheet
- Documentation Showing:
 - Funds received in the form of an Economic Injury loan since January 31, 2020
 - Payments for group health care benefits including premiums paid in 2019 to 2020 year to date
 - Payment of any retirement benefits paid in 2019 and 2020 year to date

Needed for verification of forgiveness amount:

- Quarterly IRS forms 940, 941, or 944 for the following dates:
 - March 31, 2019 and June 30, 2019
 - March 31, 2020 and June 30, 2020
- Documentation in the form of canceled checks, payment receipts, and bank statements showing payment of the following items from February 15, 2020 to eight weeks after loan closing:
 - Mortgage interest
 - Rent payments
 - Utilities payments, including:
 - Electricity
 - Water
 - Gas
 - Transportation
 - Telephone

- Internet access



Christina L. Moore

Christina Moore has experience in transactions involving real estate acquisitions and dispositions, including transactions involving apartment complexes, real estate and related-asset secured loans and other complex credit facility transactions. Ms. Moore can be reached at cmoore@taylorenghish.com.

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Taylor English Duma LLP | 1600 Parkwood Circle, Suite 200 | Atlanta, Georgia 30339