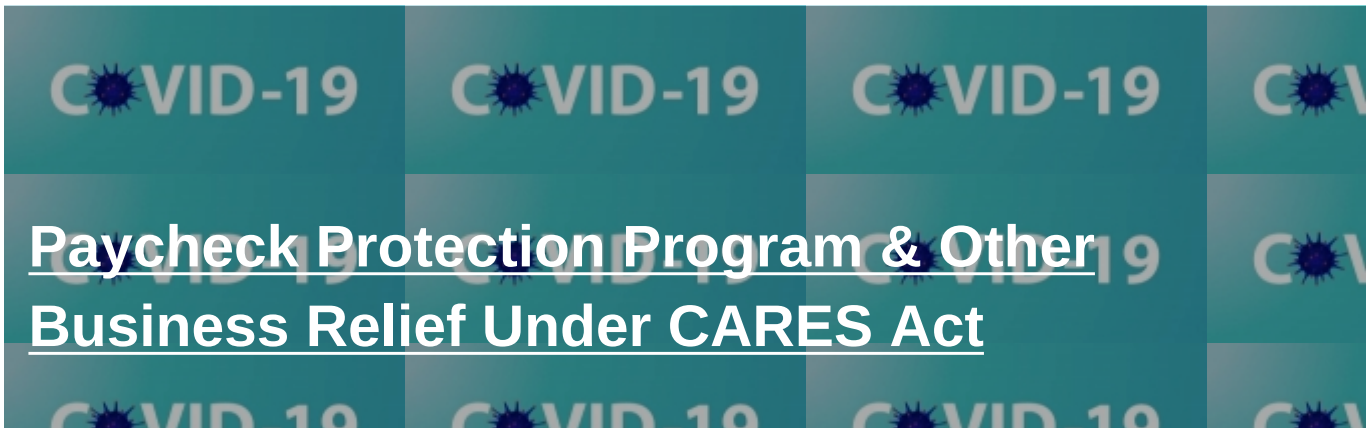


Paycheck Protection Program & Other Business Relief Under CARES Act

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The recently enacted CARES Act provides much needed relief for small business and mid-sized businesses in the Kansas City area and across the nation through various lending programs, some of which include forgivable grant type portions of such loans for qualifying expenses.

Paycheck Protection Program / Expanded 7(a) Loans:

The CARES Act expanded the current SBA 7(a) loan program to allow businesses that previously did not meet the SBA size guidelines to apply for so-called “Paycheck Protection” loans. Any business in operation on February 15, 2020 with 500 or fewer employees may apply for the loan. The business must have employees for whom the business paid salaries and payroll taxes. Additionally, unlike the SBA Federal Disaster Loan, the business need not certify that it was unable to obtain credit elsewhere.

The maximum loan amount is 2.5 times of your average monthly payroll costs incurred during calendar year 2019 in most cases. The loan amount is capped at a maximum of $10 million. Payroll costs include:

• Any payment of compensation to employees;
• Payment of cash or equivalent;
• Payment for vacation, parental, family, medical or sick leave;
• Allowance for dismissal or separation;
• Payment required under group health care benefits;
• Payment of any retirement benefit; and
• Payment of state or local tax assessed on the compensation of employees.

If your business has an outstanding SBA Disaster Loan made on or after January 31, 2020 and before the date on which this loan is made or refinanced, the outstanding amount of that loan will be added to the 2.5 average monthly payroll costs when determining the maximum loan amount.

Payroll costs do not include the compensation of an individual employee in excess of an annual salary of $100,000 prorated for the period between 2/15/2020 and 6/30/2020, and certain payroll taxes not mentioned above. A business may include the payroll costs for such employees up to and including the

$100,000 mark.

Independent contractors and sole proprietors will be eligible to apply for these loans starting on April 10, 2020.

Based on newly released regulations from the Department of the Treasury, every applicant will receive the same loan terms. The loan will bear an interest rate of 1 % annually and will mature in two years. All loan payments are deferred for the first 6 months following origination of the loan. No personal guarantee is required, but the federal government will guarantee 100% of the loan through December 31, 2020. Thereafter, the standard governmental guarantee of 75% for loans in excess of $150,000 and 85% for loans less than or equal to $150,000 will apply. Fees associated with applying for the loan are waived through at least June 30, 2020. The business will not incur a penalty for prepayment of the loan.

The loan proceeds may only be used to pay the following expenses:
• Payroll costs;
• Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
• Employee salaries, commissions, or similar compensation;
• Payment of interest on any mortgage obligation, but not any prepayment or payment of principal;
• Rent, including rent under a lease agreement;
• Utilities; and
• Interest on any other debt obligations incurred before February 15, 2020.

Perhaps the most enticing element of the Paycheck Protection Loan is the availability of loan forgiveness. Up to 100% of the total loan amount may be forgiven. Businesses will be eligible to receive forgiveness of indebtedness associated with the Paycheck Protection Loan in an amount equal to 8 weeks of payroll costs and payment of rent, utilities, and mortgage interest where the obligation was incurred prior to February 15, 2020. Payroll costs must represent at least 75% of the loan amount to be forgiven. The 8 week period for calculating loan forgiveness begins on the date the loan is originated. However, the amount of indebtedness eligible for forgiveness will be reduced by the:

1. Reduction of 25% or more in pay of any employee who is compensated less than $100,000 annually; and
2. Reduction in workforce, as evidenced by the average number of full time equivalent employees per month from 2/15/2020 to 6/30/2020 divided by the average number of full time equivalent employees per month during the period from 2/15/2019 to 6/30/2019, or during the period from 1/1/2020 to 2/29/2020 (the business may choose which time period is used).
3. But, any pay reduction or reduction in workforce that is eliminated by 6/30/20 will not affect a borrower’s forgiveness amount

The final application for a Paycheck Protection Loan may be viewed by clicking **here.** Lenders will begin processing applications on April 3, 2020. Banks may have their own application and requirements in addition so check with your lender. Businesses must be prepared to complete an application and provide proof of payroll costs and other expenses outlined above. We strongly suggest businesses review the application and begin contacting their preferred lender to determine whether the lender will be participating in the program and any nuances to their application. In addition, certain banks have delayed their participation in the program while they implement the changes made by the regulations issued on April 2, 2020.

Additional information from the SBA on the Paycheck Protection Program is available by clicking **here.** Additionally, materials provided by the Department of the Treasury related to the Program may be reviewed by clicking **here.**

SBA Federal Disaster Loans:

The CARES Act made additional funding available to the SBA to issue Economic Injury Disaster Loans (EIDL) to small businesses that meet the SBA's size guidelines. The SBA determines whether a business is considered a "small business" and eligible to apply for an EIDL loan based on the business's NAICS code. The applicable size guideline for each NAICS code is available **here.** Private non-profit organizations of any size may also apply for an EIDL loan.

The size of the business is not the only standard for determining eligibility for an EIDL loan. EIDL loans are loans of last resort, meaning the business, its affiliates, and principal owners (those with ownership interests of 20% or more) must have exhausted all reasonably available funds and be unable to obtain credit elsewhere. The SBA will make a determination of whether the EIDL loan is business's last resort based on the company's cash and assets. The SBA will expect the company, its owners, and affiliates to use personal funds and personal lines of credit before applying for an EIDL loan.

Additionally, in order to qualify for an EIDL loan, the business must have suffered severe economic injury due to COVID-19, such that the business is not able to pays its debts as they become due or meet its necessary operating obligations. Loss of future profits or an anticipated drop in revenue is not considered sufficient economic injury.

The maximum loan amount is $2 million. The maximum term of the loan is 30 years, with an interest rate of 3.75% for for-profit businesses and 2.75% for nonprofit businesses. Currently EIDL loans are eligible for payment deferral for twelve months. There is no fee to apply. Applications must be submitted by December 21, 2020.

Loans in excess of $25,000 require collateral in the name of the business, to the extent such collateral is available. However, the SBA will not decline an application for an EIDL loan simply because of a lack of collateral, so long as the SBA, in their sole discretion, is reasonably confident the applicant will be able to repay the loan.

More information regarding EIDL loans is available at the SBA's website, by clicking **here.** To access the EIDL loan application, **click here.**

Mid-Sized Business Loans:

The CARES Act makes financing available to banks and other lenders to make direct loans to eligible businesses, including nonprofits, with between 500 and 10,000 employees. The interest rate for the loan is 2% or less per annum. Additionally, the Act provides that no principal or interest payments will be due for the first 6 months after loan is made, or for a longer period as determined by the Secretary of the Treasury.

In order to qualify for this loan program, the business must certify in good faith that the following is true and accurate:

1. The uncertainty of economic conditions on the date of the loan application made the loan necessary to support ongoing operations of the business;
2. The loan proceeds will be used to retain at least 90% of the business's workforce, at full compensation and benefits, until 9/30/2020;
3. The business intends to restore not less than 90% of its workforce as of 2/1/2020, and to restore all compensation and benefits to workers no later than 4 months after the termination date of the public health emergency declared on 1/31/2020 for COVID-19;
4. The business is organized and domiciled in the United States with significant operations and employees located in the United States;

5. The business is not a debtor in a bankruptcy proceeding;
6. The business will not pay dividends with respect to common stock, or re-purchase an equity security that is listed on a national securities exchange of the business or any parent company while the loan is outstanding, except to the extent required under a contractual obligation that existed as of March 27, 2020;
7. The business will not outsource or offshore jobs for the term of the loan and 2 years after completing repayment of the loan;
8. The business will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing repayment of the loan; and
9. The business will remain neutral in any union organizing effort for the term of the loan.

Applications for mid-sized business loan applications are not currently available.

There are limitations related to the use of these programs and other benefits established by the CARES Act or the SBA. The limitations are generally intended to prevent beneficiaries from “double dipping” for the same expenses. For example, businesses that receive a Paycheck Protection Loan will generally be ineligible for the refundable payroll tax credit created by the CARES Act. Information regarding this tax credit is available at the Treasury Department’s website by clicking here.

This article is general in nature and does not constitute legal advice. Please note that new guidance is being provided by authorities on a daily basis so please monitor new developments and guidance. Readers with legal questions about how these orders apply to your business and your employees should consult the authors Bailie Schnackenberg (bailies@sb-kc.com) Char Heins at (cheins@sb-kc.com) or John Fuchs (jfuchs@sb-kc.com) or your regular contact at Seigfreid Bingham at 816-421-4460.

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