

April 2020

Follow @Paul_Hastings



PH COVID-19 Client Alert Series: Treasury Department Releases Paycheck Protection Program Guidance

By [Thomas P. Brown](#), [Sean Unger](#) & [Shreya Gupta](#)

The CARES Act was enacted on March 27, 2020, establishing a new \$349 billion Paycheck Protection Program. The Program is intended to provide much needed relief to millions of small businesses, enabling them to sustain their businesses and keep their workers employed during the pandemic caused by COVID-19. As with any large piece of legislation with so many key provisions, the release of the CARES act has raised questions on the part of both lenders and borrowers about both the implementation of the program and how these loans would play out in practice.

The Treasury released guidance on March 30, 2020 that attempts to answer many of these questions and resolve any potential ambiguities.¹ This alert highlights and summarizes the key takeaways from the Treasury's first guidance report as small businesses and lenders prepare to apply for and receive loans.

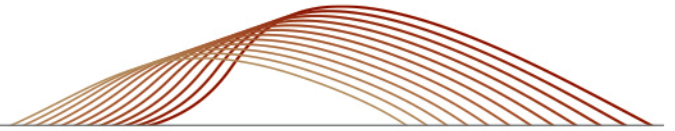
Who Can Apply?

All businesses—including nonprofits, veterans' organizations, tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors—with 500 or fewer employees can apply for these loans. While the guidance did not explicitly clarify the standards on "affiliate" status, the loan application form itself defines "owner" as one who owns "20% or greater," thus signaling that a similar standard may be applied to determine affiliate status.² The Treasury has clarified that only one loan can be taken out per business, and has recommended applying as early as possible, given the \$349 billion cap on funds available in the Program and the time required for lenders to process applications.³

Application Process:

Small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders starting April 3, 2020.⁴ For independent contractors and self-employed individuals, the starting date is April 10, 2020.⁵ Other regulated lenders will be available to make these loans as soon as they are approved and enrolled in the program.⁶

Businesses can apply through any existing SBA lender or through any federally-insured depository institution, federally-insured credit union, and Farm Credit System institution that is participating.⁷ Businesses have been directed to refer to www.sba.gov for a list of SBA lenders.



The loan request must include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations.⁸ It must also include a certification that these documents are accurate and that the business used the forgiveness amount for the permitted purposes. The lender must make a decision on the forgiveness within 60 days.⁹

Information for Lenders:

The SBA will guarantee 100% of the outstanding balance of the loans and will waive all SBA guaranty fees, including the upfront and annual servicing fees.¹⁰ The SBE will not collect any fee for any guarantee sold into the secondary market.¹¹

Definition of an Agent:

The guidance contains an inconsistency regarding the definition of an “agent,” which will hopefully be resolved in upcoming guidance reports.¹² One bullet point defines agent as “someone who prepares an applicant’s application for financial assistance and is employed and compensated by the applicant,” while another also states that an agent cannot be compensated by the applicant, but instead can only be compensated out of lender fees.¹³

Interest Rates/Term:

The guidance has imposed a fixed interest rate of .50% and provides that loans under the Program will have a two-year term.¹⁴ While loan payments are deferred for six months, interest will continue to accrue.¹⁵

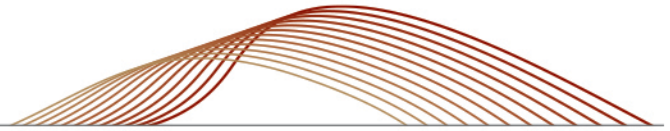
Limits on Loan Forgiveness:

Loan amounts will be forgiven as long as proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the eight-week period after the loan is made and employee and compensation levels are maintained.¹⁶ While the language of the CARES Act seems to allow for up to a 25% reduction in employee levels or salary to be eligible for full forgiveness, the implementation guidance clarifies that the Treasury anticipates that not more than 25% of the forgiven amount may be for non-payroll costs, presumably to preserve funds.¹⁷

Conclusion:

While the Treasury’s guidance has clarified many of the relevant provisions for businesses and lenders, some questions still remain unanswered. We expect that, in the coming days and weeks, additional guidance may be available. Until then, please feel free to reach out to us with any questions.





If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings San Francisco lawyers:

Thomas P. Brown
1.415.856.7248
tombrown@paulhastings.com

Shreya Gupta
1.415.856.7061
shreyagupta@paulhastings.com

Sean D. Unger
1.415.856.7056
seanunger@paulhastings.com

Molly E. Swartz
1.415.856.7238
mollyswartz@paulhastings.com

-
- 1 Dep't of the Treasury, "How the Treasury Department is Taking Action" (Mar. 17, 2020)
 - 2 Small Business Administration, Paycheck Protection Program Application Form; See also Dep't of the Treasury, PPE Information Sheet: Borrowers at 1 (available at <https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf>) (suggesting that additional guidance may be released to clarify affiliate guidelines).
 - 3 Dep't of the Treasury, PPE Information Sheet: Borrowers at 1 (available at <https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf>). The Secretary has also said that it will seek additional funding if funds are exhausted.
 - 4 Id.
 - 5 Id.
 - 6 Id.
 - 7 Id.
 - 8 Id.
 - 9 Id.
 - 10 Dep't of Treasury, PPE Information Sheet: Lenders (available at <https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf>).
 - 11 Id.
 - 12 Id.
 - 13 Id.
 - 14 Dep't of the Treasury, PPE Information Sheet: Borrowers at 1 (available at <https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf>).
 - 15 Id.
 - 16 Id.
 - 17 Id.

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2020 Paul Hastings LLP.