



The Paycheck Protection Program under the CARES Act

April 2, 2020

**(Updated April 3 After Presentation to Reflect
New Guidance in Interim Final Rules by SBA)**

Marc Latman

Contact:

212-907-9787

mlatman@sgrlaw.com



John Spillman

Contact:

404-815-3650

jspillman@sgrlaw.com



Tobin Walls

Contact:

404-815-3964

twalls@sgrlaw.com



Danielle Comanducci

Contact:

646-887-9522

dcomanducci@sgrlaw.com



Stephen M. Klein

Bennett Thrasher, LLP

Contact: 770-673-8000



CARES Act

- Coronavirus Aid, Relief, and Economic Security Act signed into law March 27, 2020
- Expansive Relief
 - Individuals
 - Direct Funds for Individuals
 - Employee Health & Welfare Protections
 - Job Security
 - Rights to Pension Funds
 - Quicker Access to and More Robust Unemployment Insurance
 - Limit on Evictions
 - Small Businesses
 - Payroll Protection Program
 - Tax Relief
 - Travel, Hospitality, Transport
 - Supports Efforts to Eradicate, Test for and Protect from COVID-19

Payroll Protection Program

- Loan Program to “Small” Businesses
- Overseen by the SBA but Administered through Commercial Banks
- Objectives:
 - Maintain Status Quo - Encourage Employers to Keep Employees on the Payroll at Similar Wages
 - Ensure Individuals Continue to Receive Income to Pay Bills
 - Consumers with Money to Spend to Prime the Economy when “Work from Home” Efforts End
- Method: Cover 8 Weeks of “Payroll” Expenses of “Small” Businesses

Basics of the Program

- Loan Program – Immediate Term “Loan” for Payroll Expenses
- Term of Up to 2 Years
- Deferral of Payments for 6 months
- 100% Loan Forgiveness Eligibility (at end of Deferral Period)
- It’s a “No Fee”, Non-Recourse, Non-Collateralized, Non-Guaranteed Loan
- Interest Rate of ~~0.50%~~ 1.00% - Accrues but Forgiven if Principal Forgiven **~~NOT FORGIVEN~~**
- Retain Employees & Maintain Level of Compensation
- Employee Size Standard But No Revenue Size Standard

Other Available SBA Relief

- There are other types of loans available through the SBA or SBA preferred lenders, including “**Economic Injury Disaster Loans**” (EIDL).
 - Includes Private Nonprofit Organizations
 - Financially impacted as a direct result of COVID-19 since January 31, 2020
 - Up to \$2 million for financial obligations and operating expenses.
 - The interest rates of: 3.75% for small businesses
 2.75% for private nonprofit organizations.
 - \$10,000 advance (emergency grant) within 3 days.
 - Not required to repay emergency advance funds if denied.
 - **Can still receive PPP loan** (just not used for the same purposes).

Basics of the Program – “Small”

- “Small” Is Not So Small. **Greater of:**
 - The size standard per SBA’s Guidelines for Applicant’s Industry
 - [Size Standards Used To Define Small Business Concerns](#) – 13 CFR §121.201
 - North American Industry Classification Systems (NAICS) – Produced by the US Commerce Department (**See Chart on Slide**)
 - Up to (and Including) 500 Employees Across Locations and Affiliated Companies, with Exceptions

Basics of the Program – “Small”

- Size Exceptions
 - NAICS Sector 72—Accommodation and Food Services
 - As long as no more than 500 employees at any one location
 - Greater of 500 and NAICS Sector Size
 - Inapplicability of Affiliation Rules to Certain Business Types
- Calculation of Employees Includes Full-Time, Part-Time and “Other Basis” ~~(Working Through Temp Agency)~~ (Current Advice Based on Interim Final Rule Issued April 2 is Do Not Include Independent Contractors in Head Count Analysis)

Basics of the Program – “Small”

From: [Size Standards
Used To Define Small
Business Concerns](#)
(13 CFR §121.201)

Subsector 336—Transportation Equipment Manufacturing ⁶			
336111	Automobile Manufacturing		1,500
336112	Light Truck and Utility Vehicle Manufacturing		1,500
336120	Heavy Duty Truck Manufacturing		1,500
336211	Motor Vehicle Body Manufacturing		1,000
336212	Truck Trailer Manufacturing		1,000
336213	Motor Home Manufacturing		1,250
336214	Travel Trailer and Camper Manufacturing		1,000
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing		1,000
336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing		1,000
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing		1,000
336340	Motor Vehicle Brake System Manufacturing		1,250
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing		1,500
336360	Motor Vehicle Seating and Interior Trim Manufacturing		1,500
336370	Motor Vehicle Metal Stamping		1,000
336390	Other Motor Vehicle Parts Manufacturing		1,000
336411	Aircraft Manufacturing		1,500
336412	Aircraft Engine and Engine Parts Manufacturing		1,500
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing ⁷		1,250 ⁷
336414	Guided Missile and Space Vehicle Manufacturing		1,250

Basics of the Program – “Small”

- Affiliation Rules (common control/ownership) Exception (Companies Worker Calculation Not Aggregated):
 - NAICS Sector 72—Accommodation and Food Services
 - A Franchise Assigned an SBA Franchise Identifier Code
 - Entities Receiving Financial Assistance from a Small Business Investment Company Licensed by the SBA (under 15 U.S.C. 681)
- Affiliation Rules
 - Includes Employees of Worldwide Affiliated Companies
 - Affiliated Companies May Separately Apply (Subject to Size Limits)

Qualifying “Businesses”

What type of Businesses Qualify (Subject to Acts Size Standards):

- **Small Business Concerns**
 - Independently Owned and Operated
 - Not Dominant In Its Field Of Operation
- **Any Business Concern**
- **Nonprofit Organization – Only 501(c)(3)**
- **GIG Worker Eligible:** Sole Proprietorship, Independent Contractor and “Eligible Self-Employed Individuals”

Qualifying “Businesses”

What type of Businesses Qualify (Subject to Acts Size Standards):

- **Veterans Organization**
- **Tribal Business Concern is a Small Business Concern**
 - Wholly Owned by Native American Tribal Governments; or
 - Owned in Part by Native American Tribal Governments with All Other Owners being US Citizens or Small Business Concerns
- In Operation by February 15, 2020, Paying Salary & Payroll Taxes or FORM 1099-MISC for Independent Contractors
- Foreign Ownership?

Qualifying “Businesses”

Foreign Ownership?

Applicants who are individuals and all 20% or greater owners of the business must answer the following questions. If questions (5) or (6) are answered “Yes” or question (7) is answered “No”, the loan will not be approved.

Question	Yes	No
5. Are you presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, on probation or parole?	<input type="checkbox"/>	<input type="checkbox"/>
Initial here to confirm your response to question 5 →		
6. Within the last 7 years, for any felony or misdemeanor for a crime against a minor, have you: 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?	<input type="checkbox"/>	<input type="checkbox"/>
Initial here to confirm your response to question 6 →		
7. <input type="checkbox"/> I am a U.S. Citizen <u>OR</u> <input type="checkbox"/> I have Lawful Permanent Resident status <input type="checkbox"/> No		
Initial here to confirm your response to question 7 →		

Qualifying “Businesses”

Foreign Ownership?

Answering “No” to Question 7 on application form
(are all 20%+ Owners US Citizens/Permanent
Residents) no longer stated as constituting
ineligibility of the Applicant for the Loan Program.

When?

April 3, 2020 - Small Businesses and Sole Proprietorships

April 10, 2020 - Independent Contractors and Self-employed Individuals

Available Amount

AVAILABLE AMOUNT TO BORROW

- Lesser of:
 - (1) \$10,000,000 **and**
 - (2) 2.5 x The Average Total Monthly Payroll Costs For The 1-year Period Before Loan Is Made; **or**
2.5 X Seasonal Employer The Average Total Monthly Payments For Payroll For The 12-week Period Beginning February 15, 2019 (March 1, 2019 – June 30, 2019)

Available Amount

AVAILABLE AMOUNT FOR FORGIVENESS

- Forgiveness of 100% of Borrowed Amount Decreased by
 - Average Head Count Decrease
 - Any Salary Decrease
- Apply for Forgiveness – Lender has 60 Days from Application to Inform of Forgiveness

Available Amount

- Any **Head Count** Decreases between February 15, 2020 and June 30, 2020 (**Covered Period**)
 - Average Number of FTEs per Month
 - Covered Period vs EITHER Feb 15 – June 30 of 2019 or Jan 1 to Feb 29, 2020
 - For Seasonal Employers the Comparison is Against the 2019 Period

Available Amount

- Any **Salary Decrease** of FTE during Covered Period
 - Exceptions:
 - Can Decrease Salary of FTE up to 25%
 - Unlimited Decrease in Salary of Any FTE Earning Equivalent of \$100,000/yr during any 2019 Pay Period
- Employers of Tipped Workers Eligible for Forgiveness for Additional Wages Paid to Tipped Workers
- Principal Forgiveness of These Loans Not to be Counted as Income

Right to Cure to Restore Forgiveness

- Right to Cure Due to Head Count Decrease
 - FTE Head Count Decrease February 15, 2020 - April 26, 2020
 - Restore FTE Head Count by June 30, 2020

Right to Cure to Restore Forgiveness

- Right to Cure Due to Salary Decreased
 - Salary Decrease February 15, 2020 - April 26, 2020
 - Restore Salaries by June 30, 2020

Eligible & Ineligible Payroll Costs

- Used for Calculating Eligible Loan Amount and Qualifying Use of Funds (Violation Makes the Loan Recourse)
- **Eligible “Payroll costs” include:**
 - salary, wages, commissions, or similar compensation
 - cash tips or equivalent
 - payments for vacation, parental, family, medical, or sick leave
 - severance pay
 - payments required for the provisions of group health care benefits, including insurance premiums
 - payment of any retirement benefit
 - payment of state or local tax assessed on the compensation of employees.

Eligible & Ineligible Payroll Costs

- **Ineligible “Payroll costs” include:**
 - Amounts for an individual employee in excess of an annual salary of \$100,000
 - Compensation paid to employees whose principal place of residence is outside the US
 - Certain payments for which tax credits are allowed under the Families First Coronavirus Response Act.

Employer's GOOD FAITH CERTIFICATIONS

“(G) BORROWER REQUIREMENTS.—

“(i) CERTIFICATION.—An eligible recipient applying for a covered loan shall make a good faith certification—

“(I) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;

“(II) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

“(III) that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and

“(IV) during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

Qualifying Use

Qualifying Use for Forgiveness

- Payroll Costs, Employee Salaries, Commissions, or Similar Compensations
- Costs of group health care benefits during periods of paid sick, medical, or family leave
- Health insurance premiums
- Payments of ***interest*** on any mortgage obligation;
- Rent (under a lease agreement)
- Utilities

**PAYCHECK PROTECTION PROGRAM (PPP) INFORMATION SHEET:
BORROWERS**

Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

Preparation for Filing

Application Preparation Fees of “Agents” of Eligible Applicant and Lender are Payable by Lender, including those of your lawyers and accountants:

c. *Who pays the fee to an agent who assists a borrower?*

Agent fees will be paid by the lender out of the fees the lender receives from SBA. Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed:

Other Available Relief

The screenshot shows a web browser window with the address bar containing centers.fuqua.duke.edu/case/knowledge-center/. The browser's taskbar at the top shows several open applications: Apps, Aircraft Registry, Outlook, Pages - Firm View, seamlessweb, Webex Signin, Cisco Webex Meeti..., and Percentage Calculat... The website header features the 'DUKE FUQUA CASE' logo and a navigation menu with links: ABOUT, STUDENTS, ALUMNI, PRACTITIONERS, RESEARCHERS, KNOWLEDGE CENTER, NEWS & EVENTS, and DONATE. Below the header is a dark grey bar with the text 'Knowledge Center'. The main content area has a paragraph: 'The CASE Knowledge Center is a collection of our research, writings, articles, and interviews we have published and conducted on social entrepreneurship over the years. You can use the category listings on the side of the page to filter the publications to your particular topic of interest. If you have any questions, please contact us at case@fuqua.duke.edu.' To the right of this text is a sidebar titled 'Knowledge Center Topics' with a list of links: [Business Models](#), [CASE i3](#), [Impact Investing](#), [Measurement](#), [Scaling Social Impact](#), [Social Entrepreneurship Insights](#), [Social Entrepreneurship Education](#), and [Theories of Social Entrepreneurship](#). A yellow oval highlights the main text area, and a red rectangle highlights a section titled '#COVID19CapitalRelief Database'. This section contains the text: 'On March 26, 2020, CASE launched #COVID19CapitalRelief, a searchable database for global, national and regional capital sources for for-profit and nonprofit entrepreneurs at risk due to COVID-19. Access the nearly 100 resources representing approximately \$14.5 billion in newly available capital sources for entrepreneurs during this challenging time and submit any additional resources:'. Below this text are two links: [Find capital](#) and [Suggest more resources](#).

centers.fuqua.duke.edu/case/knowledge-center/

Apps Aircraft Registry Outlook Pages - Firm View seamlessweb Webex Signin Cisco Webex Meeti... Percentage Calculat...

DUKE FUQUA CASE

ABOUT STUDENTS ALUMNI PRACTITIONERS RESEARCHERS KNOWLEDGE CENTER NEWS & EVENTS DONATE

Knowledge Center

The CASE Knowledge Center is a collection of our research, writings, articles, and interviews we have published and conducted on social entrepreneurship over the years. You can use the category listings on the side of the page to filter the publications to your particular topic of interest. If you have any questions, please contact us at case@fuqua.duke.edu.

#COVID19CapitalRelief Database

On March 26, 2020, CASE launched #COVID19CapitalRelief, a searchable database for global, national and regional capital sources for for-profit and nonprofit entrepreneurs at risk due to COVID-19. Access the nearly 100 resources representing approximately \$14.5 billion in newly available capital sources for entrepreneurs during this challenging time and submit any additional resources:

[Find capital](#)
[Suggest more resources](#)

Knowledge Center Topics

- [Business Models](#)
- [CASE i3](#)
- [Impact Investing](#)
- [Measurement](#)
- [Scaling Social Impact](#)
- [Social Entrepreneurship Insights](#)
- [Social Entrepreneurship Education](#)
- [Theories of Social Entrepreneurship](#)

Additional Information

SBA Size Standards for Industries

- https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf
- https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7780ee089107f59ef3f78b938e2282b7&r=PART&n=13y1.0.1.1.17#se13.1.121_1201

Additional Information

Paycheck Protection Program

- **General Info:** <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>
- **Application:** <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>
- **Borrower Info:** <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>
- **Lender Info:**
<https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf>
- **SBA Final Interim Rule:** <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>

Additional Information

Visit SGR's COVID-19 Resource Center
For Additional Information And Resources,
Including SGR Webinars Concerning COVID-19
<https://www.sgrlaw.com/covid-19-resource-center/>

ANY QUESTIONS?

Thank You For Joining Us!

Send suggestions for additional SGR Webinars focused on COVID-19 and feedback on this webinar:

sgrcommunications@sgrlaw.com

This presentation will be available on the SGR COVID-19 Resource Webpage within 24-48 hours.