

SBA Paycheck Protection Program

Phil Feigen and Sara Ainsworth

Introduction



Phil Feigen, Office Managing Partner

Phil Feigen is a shareholder in Polsinelli's Business Department, chair of the Financial Institutions Practice Group and managing partner of the firm's Washington, DC office. With over 25 years of experience, Mr. Feigen brings a unique perspective to providing general corporate advice, as well as complex business counsel to clients in ever-changing regulatory environments. His practice focuses on representing Small Business Investment Companies, other private investment funds, federal and state banks and other financial services related companies. Mr. Feigen has represented clients in formation of investment funds, raising capital, and complying with complex federal/state licensing and regulatory requirements. With expertise working with funds of all sizes, he has extensive experience working on specialty funds under \$500 million.



Sara Ainsworth, Associate

As an associate in the Securities & Corporate Finance practice, clients rely on Sara Ainsworth to work with Polsinelli's team of attorneys to analyze each transaction matter to develop a strategic approach to representation based on the client's immediate and long-term business and operational goals. Working closely with seasoned Polsinelli attorneys in the Securities & Corporate Finance practice, Sara helps deliver a range of legal services during the life cycle of the client's business—from selecting the appropriate choice of entity through to exit strategy, and assisting with the nuts and bolts of fund formation and fund transactions.

Who is eligible?

- Businesses, nonprofit organizations, veterans' organizations, or Tribal businesses which employ less than 500 employees;
- Small businesses as determined by its NAICS code; and
- Small businesses as determined by the alternative size test: Less than \$15 million net worth and \$5 million average net income for the past full two fiscal years.

You must aggregate with any affiliates when determining eligibility.

Affiliation Rules

- For the PPP program, you must aggregate your average number of monthly employees for the preceding 12 months with that of your affiliates.
- Affiliation is a question of control, and usually is indicated by stock ownership of more than 50% or management rights.
- Certain minority blocking rights may also demonstrate affiliation.
- There is an exception for SBIC investments.

Certification of Economic Need

- “[A]ll borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.””
- Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”
- This is the *New York Times* test or LA Lakers test or Shake

How much money is available?

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- Maximum of \$10 million.
- Based on average total monthly payroll costs multiplied by 2.5.

How to calculate the maximum loan amount

For C-corporations, S-corporations or LLCs that file as corporations

- 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, which can be computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, subtracting any amounts paid to any individual employee in excess of \$100,000 and any amounts paid to any employee whose principal place of residence is outside the U.S;
- 2019 employer health insurance contributions (portion of IRS Form 1120 line 24 or IRS Form 1120-S line 18 attributable to health insurance);
- 2019 employer retirement contributions (IRS Form 1120 line 23 or IRS Form 1120-S line 17); and
- 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).

Loan Terms

What is the time frame?

- Feb 15, 2020 – Jun 30, 2020 (Covered Period)

Is there a repayment schedule?

- 2 years from loan origination with 1% interest rate.
- Complete payment deferment relief for a period of not less than 6 months, but not to exceed 1 year.

Is collateral or a personal guarantee required?

- No collateral or personal guarantee is required.

What can I spend the money on?

You can only use the funds on the following expenses:

- Payroll costs
- Interest payments on mortgage obligations
- Payments on covered rent obligations
- Utility payments – internet, telephone, transportation, gas, electricity, and water

Loan Forgiveness Stipulations

What is the maximum amount eligible for loan forgiveness?

- The sum of payroll costs, rent, utilities and payments on mortgage interest in the 8 weeks following origination of the loan. Capped at 100% of the loan amount. Not more than 25% can be non-payroll costs.

How do layoffs impact the maximum amount eligible for loan forgiveness?

- The maximum amount eligible for loan forgiveness may be reduced by any layoffs. *However*, if the layoffs occur from 2/15/20 – 4/26/20 and you rehire the employees 6/30/20, there will be no reduction in the amount eligible for loan forgiveness.

What about reductions in salaries or furloughs?

- The maximum amount eligible for loan forgiveness may be reduced by reductions in salary that exceed 25% of an employee's salary. *However*, if the salary reductions occur from 2/15/20 – 4/26/20 and you eliminate that reduction by 6/30/20, there will be no reduction in the amount eligible for loan forgiveness.

Applying for the Loans

- Applications can be submitted April 3, 2020 for businesses and April 10, 2020 for sole proprietorships and independent contractors.
- Application is available [here](#).
- You must apply through an eligible 7(a) lender.
- You should prepare: payroll documentation and application. The bank may require additional information. You must also provide (a) a list of all 20% or more equity owners and (b) an addenda of any entities under common control or management, or owned by the 20% or more equity owners.



Polsinelli COVID-19 Resources



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Contact us with questions at:

COVID19CrossDeptResponseTeam@Polsinelli.com



Blog + Resources

Polsinelli's cross-disciplinary COVID-19 blog provides companies tools and information needed to effectively and lawfully protect their employees and business.

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