

Special Update

Kevin S. Woodard | April 17, 2020

Paycheck Protection Program Disclosure Requirements

What is it?

The Paycheck Protection Program (PPP) is a loan program geared toward small businesses dealing with the jarring disruptions caused by the novel coronavirus (COVID-19). It is a part of the larger \$2 trillion CARES Act and run through the Small Business Administration. It provides \$350 billion in loans to help businesses keep their workforce employed during COVID-19 crisis.

Who can apply?

The PPP provides loans to business with fewer than 500 employees. This includes traditional small businesses, 501(c)(3) non-profits, sole proprietors, independent contractors, and even gig-economy workers. What are the major terms of the loan? Eligible businesses may apply for loans up to two months of the average monthly payroll costs of the business, plus an additional 25 percent (amount based on previous year). Payroll costs are capped at \$100,000 per employee, and the total loan amount is capped at \$10 million dollars. There is no collateral or personal guarantee required. Proceeds may be used for:

- Payroll costs, including benefits and sick leave (for a full list of what's included, see [PPP Rules and Regulations](#));
- Interest on mortgage obligations incurred prior to Feb. 15, 2020;
- Rent payments on leases in effect prior to Feb. 15, 2020; and
- Utilities for services beginning prior to Feb. 15, 2020.

The interest rate on the loan is set at 1 percent, and all loan payments are deferred for the first six months, after which, interest will begin to accrue. The loan is payable over a period of two years, and there are no prepayment penalties or fees.

Loan Forgiveness

Of course, the most attractive aspect of the PPP is that these loans are forgivable, provided certain stipulations are met. The amount eligible for forgiveness (up to the total amount of the loan) is equal to the amount used for payroll costs, mortgage interest, rent, or utilities spent over the eight weeks after receiving

NEXT

the loan amount. Additionally, at least 75 percent of the loan must be spent on payroll and payroll costs (including salary, wages, commissions, and benefits). There are also a few other important provisions that can affect the amount by which your loan is forgiven.

- **Number of Staff.** The amount of your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- **Level of Payroll.** Your loan forgiveness will also be reduced if you decrease salaries and/or wages by more than 25 percent for any employee making less than \$100,000 annually (based on 2019 numbers).
- **Rehiring.** You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between Feb. 15, 2020 and April 26, 2020.

How do I apply?

If you would like to participate in the program, you can apply for a loan through any existing SBA lender or any federally-insured depository institution or credit union. This means you can likely apply through your business' existing lending institution. To apply, you will need to complete and turn in the PPP loan application as well as provide your lender with supporting payroll documentation. We have included a PDF version of the application for your convenience. The program is open until June 30, 2020, however, we recommend you apply as soon as possible due to high levels of participation in the program.*

[Paycheck Protection Program Loan Application](#)

Will participating in the Paycheck Protection Program require any disclosures?

Many investment advisers are wondering whether taking out a loan through the program will require any disclosures on their firm's Form ADV or their investment adviser representatives' Form U-4s. The short answer is no, but we'd like to provide you with a quick walkthrough to explain why.

Form ADV.

The disclosures required in Part 1A of Form ADV do not concern any financial information. Item 11 Disclosure Information asks only about the disciplinary history of your firm and its advisory affiliates regarding criminal matters and investment-related regulatory and civil matters. Similarly, a PPP loan will not require any disclosure in Part 2A. However, there is an additional element of Part 2A all firms should keep in mind, regardless of whether they decide to take out a PPP loan. Item 18 requires an investment adviser to disclose "any financial condition that is reasonably likely to impair the firm's ability to meet contractual commitments to clients" if "you have *discretionary authority or custody of client* funds or securities, or you require or solicit prepayment of more than \$1,200 in fees per client, six months or more in advance." We encourage our clients to be cognizant of this disclosure requirement due to the reduction in fees associated with the widespread market depreciation we are experiencing.

NEXT

U-4s.

The disclosure requirement in question here is item 14K, which asks whether, in the past ten years, you have (1) “made any compromise with creditors” or (2) “based on events that occurred while you exercised *control* over it, has an organization made a compromise with creditors.” This language initially led to some confusion as to whether the loan forgiveness aspect of the PPP would trigger a disclosure requirement. As noted above, the answer is no. This is because the original terms of the PPP loan contemplate forgiveness, either in part or its entirety. Thus, there has been no compromise, which requires some level of new agreement after the original terms of the loan were signed with the creditor agreeing to a reduction in the principal amount owed. Indeed, FINRA has recently confirmed this in their [FAQ Section](#) related to regulatory relief related to the coronavirus.

If you have any further questions regarding the Paycheck Protection Program, please contact us. Stay safe and healthy!

* As of the publishing of this article, SBA funds for the Paycheck Protection Program have been exhausted. However, an additional round of funding is expected.

Questions? Contact the DCS Team

Dinsmore Compliance Services (DCS), an affiliate of Dinsmore & Shohl LLP, offers compliance solutions for investment managers and municipal advisers. DCS will help you develop and maintain high-quality compliance programs customized to your particular business demands and operational realities. We offer these services, all as an affiliate of a coast-to-coast, full-service law firm.

Kevin Woodard

President
(513) 977-8646
kevin.woodard@dinsmorecomplianceservices.com

Jeff Chapman

Director of Client Relations
(513) 977-8647
jeff.chapman@dinsmorecomplianceservices.com

dinsmorecomplianceservices.com