

# The Certified Public Accounting Firm of David M. Spitzberg

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## ***Coronavirus Aid, Relief and Economic Security Act (CARES Act)-Paycheck Protection Program- Second Rough Draft***

- 1) Loans made under this Section are referred to as ***Covered Loans***.  
If used appropriately, these are nonrecourse loans. No personal guarantee and no collateral is required. No fee will be charged. There is no requirement that credit can't be obtained elsewhere. ***This loan may not be fully forgiven. The amount forgiven is not taxable income.***
- 2) The ***Covered Period*** is ***February 15, 2020 to June 30, 2020.***
- 3) An ***Eligible Recipient*** is an individual or entity eligible to receive a ***Covered Loan***. This includes businesses that employ no more than 500 employees. This includes independent contractors and the self-employed. (I'm assuming that inclusion until clarification is obtained.) The "500 employee standard" can be exceeded in certain industries. All employees are considered; full time, part time or other basis.
- 4) ***Payroll Costs*** includes the total of
  - a) salary, wage, commission, or similar compensation for employees earning up to \$100,000.00 annually. Amounts over \$100,000.00 are not considered. (For payments that total in excess of \$100,000.00 annually, 1<sup>st</sup> \$100,000.00 is prorated over covered period.)
  - b) payment for vacation, parental, family, medical or sick leave
  - c) allowance for dismissal or separation
  - d) payment required for group health care benefits, including insurance premiums
  - e) payment of any retirement benefits
  - f) payment of State or local tax assessed on employee compensation
  - g) the total of payments to or income of a sole proprietor or independent contractor representing earned income (not investment income) not exceeding \$100,000.00 in one year. (Same proration concept as indicated in a). This does not include
    - 1) Social security, Medicare and Federal Income tax responsibilities
    - 2) any compensation to an employee who's principle residence is outside of the USA
    - 3) qualified sick leave wages and qualified family leave wages for which a credit is allowed under the Families First Coronavirus Response Act

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## 5) **Documents Required** of Sole Proprietorships, Independent

Contractors and the Self-Employed include:

- a) copies of Federal payroll tax returns
- b) Forms 1099-Misc
- c) a reflection of revenues and expenses as well will be requested

## 5) **Businesses With More Than One Physical Location** are eligible for a covered loan for each location as long as that location does not employ more than 500 employees at the time of the loan and has a NAICS code beginning with 72 (Accommodation and Food Services).

## 6) **Businesses That Are Part Of An Affiliated Group** are eligible

- a) for each affiliate employing no more than 500 employees at the time of the loan and having a NAICS code beginning with 72
- b) certain businesses operating as a franchise
- c) any business receiving financial assistance from a company licensed under Section 301 of the Small Business Investment Act of 1958

## 7) **Calculation Of Maximum Covered Loan Amount**

### a) If in business from February 15, 2019 to June 30, 2019:

- 1) Determine the average total monthly payments for **payroll costs** incurred during the 1 year period before the date of the loan.
- 2) Multiply 1) by 2.5.
- 3) Determine the outstanding balance of any SBA loan made during the period from January 1, 2020 to the date that covered loans are made available.  
This applies to SBA loans that can be refinanced with covered loans.
- 4) Add 2) plus 3).
- 5) The maximum loan amount is the lessor of 4) or \$10,000,000.

### b) If not in business from February 15, 2019 to June 30, 2019

- 1) Determine the average total monthly payments for **payroll costs** incurred from January 1, 2020 to February 29, 2020.
- 2) Multiply 1) by 2.5.
- 3) Determine the outstanding balance of any SBA loan made during the period from January 1, 2020 to the date that covered loans are made available.  
This applies to SBA loans that can be refinanced with covered loans
- 4) Add 2) plus 3).
- 5) The maximum loan amount is the lessor of 4) or \$10,000,000.

## 8) **Allowable Uses Of Covered Loans During The Covered Period**

### a) **Payroll costs**

- b) costs for continuation of group health care benefits during periods of paid sick, medical or family leave and insurance premiums
- d) employee salaries, commissions or similar compensation
- e) interest payments on any mortgage obligation. Payments of principal are not permitted.
- f) rent
- g) utilities
- h) interest on any other debt incurred before the **Covered Period**.

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## 9) **Loan Forgiveness**

- a) **For this purpose, Covered Period is the 8 Week Period starting on the date that the Covered Loan is provided. Allowable Uses Can Differ From Loan Forgiven Uses.**
- b) **Forgiveness Amount** is the total amount of the **Covered Loan** principal that a borrower **uses during a 8 Week Period**, starting on the date that the **Covered Loan** is provided, for:
  - 1) payroll costs
  - 2) interest payments on a mortgage on real or personal business property where the mortgage began before February 15, 2020. Payment of principal is not permitted.
  - 3) payment of rent obligated by a lease in force before February 15, 2020
  - 4) payment of utilities for electric, gas, water, transportation, telephone or internet if Service began before February 15, 2020.
  - 5) **Notice that, for example, interest on any other debt paid during the 8 Week Period is not listed here.**
- c) The **Forgiveness Amount** will be reduced if
  - 1) The **average number of full-time equivalent employees** (considers part-time employees) for each pay period per month during the **8 Week Period** is less than either
    - a) that number for the period from February 15, 2019 to June 30, 2019
    - b) that number for the period from January 1, 2020 to February 29, 2020
    - c) for a seasonal employer, that number for the period from February 15, 2019 to June 30, 2019(For non-seasonal employers, either 1) a) or 1) b) can be selected.)
  - 2) The total salary and wages of any employee during the **8 Week Period** is reduced by more than 25% as compared to that employee's total salary and wages of the most recent full quarter during which the employee was employed before the **8 Week Period**. Employees considered here are those that did not receive during any 2019 pay period wages or salaries that would, if annualized, total in excess of \$100,000 per year.
- d) The **Forgiveness Amount** reduction will be restored if
  - 1) During the period from February 15, 2020 to April 26, 2020, as compared to February 15, 2020, there is a reduction in the number of full-time equivalent employees or in the salary or wages of one or more employees and
  - 2) The employer has eliminated the reduction(s) no later than June 30, 2020.
- e) De minimis exemptions regarding **Forgiveness Amount** reductions may be issued.

## 10) **Remaining Balance of Covered Loans After Forgiveness**

- a) There's a maximum maturity of 10 years from the date of the loan application.
- b) The interest rate can't exceed 4%.
- c) payment deferral for impacted borrowers of at least 6 months and not more than 1 year for principal, interest and fees
- d) no prepayment penalties

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## **11) Covered Loan Application Shall Include**

- a) payroll documents relevant to the matters in 9) including payroll journals and copies of filed payroll tax returns
- b) documents including cancelled checks, invoices, payment receipts, account transcripts, copies of leases and other documents verifying payments for permitted mortgages, permitted leases and permitted utilities
- c) certification that the documents provided are true and correct and that the amount requested for forgiveness was used to pay employees, permitted mortgage interest, permitted lease payments, permitted rent and permitted utility obligations