

Publications

3PLS, CARRIERS, AND SHIPPER'S JOIN TOGETHER CARES Act Forgivable Paycheck Protection Program Loans, EIDL Grants and More

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COVID-19 has created an economic crisis, and we can all use some help to keep our businesses operating in these uncertain times. To that end, federally available, potentially **fully forgivable loans** are available to eligible 3PLs, carriers, and shippers alike (among other things, typically those with 500 or fewer employees)—up to 25% of which may be used to pay rent (and other non-payroll related costs) and still be eligible to be forgiven. Yet, these loans are for the covered period of February 15, 2020 through June 30, 2020, with loan forgiveness in an amount equal to the costs incurred and payments made during the eight-week period following loan origination. A unique opportunity exists for 3PLs, carriers, and shippers to work collaboratively and communicate to maximize access to—and use of—available forgivable and other attractive, federal loans. These funds help ensure the continued viability of 3PLs, carriers, and shippers, who each depend on the others for their success to one extent or another.

The nuts and bolts regarding the small business loans (including forgivable loans) available under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) are detailed below. In short, aside from availing yourselves of these loans if you have 500 or fewer employees, regardless if you are a 3PL, carrier or shipper, consider communicating with your supply-chain partners who may be eligible for forgivable loans through this program. Or, direct them to Vorys and we can assist. We want nothing more than for our clients to succeed during this unprecedented time. Many do not know of this program or its expanded eligibility to include (among others) sole proprietors and self-employed individuals. Consider accessing a fully forgivable loan to make payroll and pay down any rent obligations to the allowable amount within those 90 days. As we weather this storm, 3PLs, carriers, and shippers can work together to utilize these resources, helping each other stay afloat and rebound as quickly as possible.

Coronavirus Aid, Relief, and Economic Security Act (CARES ACT)

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act)—summarized in a [previous alert](#)—which amends and expands the U.S. Small Business Administration's (SBA) flagship 7(a) Loan Program to create the Paycheck Protection Program (PPP). Coupled with the SBA's pre-existing Economic Injury Disaster Loans (EIDL) program, these programs are offering small business loans with very attractive interest rates.

Who Is Eligible For A PPP Loan?

The PPP expands the typical definition of who is eligible for these SBA loans to any business concern, nonprofit organization, veterans' organization or Tribal business concern if they employ not more than the greater of (a) 500 employees; or (b) if applicable, the size standard for the business's industry. The PPP specifically provides that individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals may be eligible under the PPP, even though they are not eligible for a traditional SBA loan.

How Does The Loan Forgiveness Aspect Work?

The CARES Act implements a loan forgiveness program for loans received under the PPP. A 3PL, carrier, or shipper is eligible for loan forgiveness in an amount equal to the costs incurred and payments made **during the eight-week period following loan origination** in the following categories:

- Payroll costs;
- Any payment of interest on any covered mortgage (which does not include any prepayment of or payment of principal on a mortgage obligation);
- Any payment on any covered rent obligation; and
- Any covered utility payment.

The forgiveness amount cannot exceed the principal amount of the loan. Additionally, recent guidance provided by the SBA notes that the forgiveness calculation echoes the allowable uses, and that 75% of PPP funds forgiven must have been used for payroll costs, while the remaining 25% may have been used for other allowable costs and expenses.

3PLs, carriers, and shippers seeking loan forgiveness must provide sufficient documentation verifying all employee and salary information. Lenders will be required to make a decision on forgiveness within 60 days of receiving a loan forgiveness application. Amounts forgiven under this section are considered canceled indebtedness by a lender authorized under 7(a) of the Small Business Act. For IRS purposes, any amount which would be includible in gross income of the eligible recipient by reason of loan forgiveness shall be excluded from gross income.

What Is The “Covered Period” For The PPP Loans?

These PPP provisions cover loans that are made between February 15, 2020 and June 30, 2020.

How Large Are The PPP Loans?

The loan size will generally be 2.5 times the applicant's average monthly payroll costs, with a maximum loan amount of \$10 million. The formula is set out in greater detail in Section 1102(a)(1)(E) of the CARES Act.

Can A 3PL, Carrier, Or Shipper Pay Rent With The PPP Loan Funds?

Yes, as long as your lease was in place as of February 15, 2020. An applicant can generally use the PPP funds for: (a) Payroll costs; (b) Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; (c) Employee salaries, commissions, or similar compensations; (d) Payments of interest on any mortgage obligation (which does not include any prepayment of or payment of principal on a mortgage obligation); (e) Rent; (f) Utilities; and (g) Interest on any other debt obligations that were incurred before the covered period.

Recent guidance provided by the SBA notes that to further the goal of maintaining payroll, the forgivable amount of non-payroll, allowable costs and expenses is capped at 25% of the loan. The funds may be used for any allowable costs but exceeding this percentage will affect the calculation of loan forgiveness. Accordingly, the commercial tenant using these funds to pay at least 75% for payroll costs may allocate up to 25% of the PPP funds to pay rent while still maintaining the benefit of loan forgiveness.

Will The Business's Loan Forgiveness Amount Be Affected If Its Business Experiences Layoffs?

The loan forgiveness amount will be reduced based on employee and salary reductions, but the PPP makes exemptions for that reduction if a tenant re-hires its employees or eliminates the salary reductions by June 30, 2020.

To calculate the amount to be forgiven as reduced based on employee reduction, the PPP uses the following formulas:

- **Non-seasonal employers** - Forgiveness amount x (the average number of FTE employees per month between February 15, 2020 and June 30, 2020 ÷ the average number of FTE employees per month between [February 15, 2019 and June 30, 2019 **or** January 1, 2020 and February 29, 2020 at the election of the borrower]).
- **Seasonal employers** - Forgiveness amount x (the average number of FTE employees per month between February 15, 2020 and June 30, 2020 ÷ the average number of FTE employees per month between February 15, 2019 and June 30, 2019).

The loan forgiveness amount will also be reduced by the amount of any reduction in total salary or wages of any employee that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter before the covered period. This does not apply for individuals who, in any single pay period, received wages at an annualized rate of pay over \$100,000.

What Happens To Loan Amounts That Are Not Forgiven?

For covered loans that have a remaining balance after the loan forgiveness reduction, the remaining balance is guaranteed by the SBA, the loan will have a two-year maturity date, and the interest rate will be 1%. There is no prepayment penalty for covered loans. The PPP also provides for no debt service payments for six months.

What Is The Process For Obtaining A PPP Loan?

Some lenders have accepted applications for PPP loans as early as April 3 for businesses and will be accepted beginning April 10 for independent contractors and sole proprietorships. Applicants should contact a participating lender to determine the details of the application process. The PPP permits the government to expand the number of lenders under this program, and allows those lenders to make and approve loans, including determining borrower eligibility. In evaluating eligibility, the lender is required to consider, among other factors, whether the borrower was in operation on February 15, 2020.

As part of the application, an applicant must make a good faith certification:

- That current economic conditions makes the loan necessary to support ongoing operations;
- Acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- That the 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
- Between February 15, 2020 and December 31, 2020, the recipient has not received amounts under this subsection for the same purpose.

The PPP waives several typical SBA loan requirements, including the requirement that a small business concern is unable to obtain credit elsewhere (the “credit elsewhere” requirement) and the personal guarantee requirement.

CARES Act’s Expanded Access To EIDL Loans (With Up To \$10,000 Grant)

Additionally, 3PLs, carriers, and shippers may be eligible for small business Economic Injury Disaster (EIDL) loans for longer-term loans with attractive loan terms. Although EIDL loans do not have the forgivable loan aspect that exists for a PPP loan, entities eligible for an EIDL may request an advance of up to \$10,000 (a grant) anticipated to be paid within 3 days of application to cover allowable working capital needs, which *does not have to be repaid* (but is deducted from any loan forgiveness amounts under a PPP loan to avoid a double dip).

Under the CARES Act, EIDL loans cover a longer period than the PPP forgivable loans: the period between and including January 31, 2020 and December 31, 2020. Similar to the PPP loans, eligibility is expanded under CARES; in addition to a entities previously eligible (businesses with not more than 500 employees, private nonprofit organizations and small agricultural cooperatives), sole proprietorships, independent contractors, and ESOPs, cooperatives and tribal small business concerns with not more than 500 employees are eligible.

To qualify for an EIDL loan under the CARES Act, the covered entity must have suffered “substantial economic injury” tied to COVID-19. EIDL loans are up to \$2,000,000, with the calculation is premised on actual economic injury as determined by the SBA, minus recoveries such as insurance proceeds.

As noted above, the CARES Act contemplates that both the PPP and EIDL loans may be issued to the same borrower provided that they are not used **for the same purpose** and **duplicative of amounts** applied for or received under the other covered loan. So, for example, although an EIDL loan can also be used for payroll costs (including rent), if the borrower also has a PPP loan, it would be advisable to use the EIDL for other, non-PPP eligible purposes, such as to cover increased costs due to supply chain interruption or to pay obligations that cannot otherwise be met due to revenue loss. Alternatively, depending upon the borrower’s needs, given the longer period covered by an EIDL, there may well be instances in which a commercial landlord or its tenant chose to solely apply for an EIDL loan (with grant that is not repaid) rather than apply for a PPP loan at all.

EIDL loans have up to a 30-year term, and the interest rate on EIDL loans is 3.75% fixed for small businesses and 2.75% for nonprofits. Unlike a PPP loan, a credit check is required on owners of 20% or more, and for an EIDL loan over \$25,000, collateral may be required. Applications for EIDL loans should be submitted directly to the SBA, as distinguished from the PPP loan application through an SBA-approved lender or other lenders as discussed above.

Join Together!

In sum, 3PLs, carriers, and shippers share the common goal of infusing funds available from federally available, and potentially forgivable, loans into their business chains to help keep everyone afloat. We are here to serve our clients and help them continue their success, and if that means supporting our clients’ customers and partners, we stand ready. If one of your partners needs help, direct them our way and we can help.

Vorys is actively monitoring the lending aspects and ongoing development of the CARES Act and other coronavirus relief efforts. Please contact your Vorys attorney with questions or for assistance.

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Vorys COVID-19 Task Force

Vorys is continuing to monitor the COVID-19 outbreak and related guidance to Insurers. In addition, Vorys attorneys and professionals are counseling our clients on a myriad of others issues related to the outbreak. We have established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.