



On April 2, 2020, the Small Business Administration (SBA) issued a final interim rule (the “Final Interim Rule”) regarding the Payroll Protection Program (PPP) under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) that has been made available through the SBA’s website at the following link: https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN_FINAL_0.pdf. The Final Interim Rule modifies and provides further guidance from the SBA regarding certain aspects of the PPP.

The PPP application is available for download through the SBA at the following link and may be submitted to an SBA-preferred lender to start the application process: <https://www.sba.gov/document/sba-form--paycheck-protection-program-borrower-application-form>.

We have summarized below certain material information provided in the Final Interim Rule and reflected in the PPP loan application which serves as an update to our March 27, 2020 alert.

The Application

Applications to the PPP were made available to businesses and sole proprietors on April 3, 2020. Independent contractors and eligible self-employed individuals are expected to be able to submit their applications to the PPP beginning on April 10, 2020.

- “First-Come, First-Served”. We note that while there has been discussion about increasing the \$349 billion currently appropriated to the PPP, the Interim Final Rules confirm that the PPP is available on a “first-come, first-served” basis.
- Required Documentation. In addition to a PPP loan application, prospective borrowers must also submit payroll documentation, which the Interim Final Rule clarifies to include payroll processor records, payroll tax filings, Form 1099-MISC for prospective borrowers who are independent contractors, or income and expenses from a sole proprietorship. If prospective borrowers do not have access to such documentation, then they must provide other supporting payroll documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.
- Signatures. The updated PPP loan application no longer requires the signature of owners of 20 percent or more of the equity of the applicant. The PPP loan application can be signed using an e-signature or eConsent.
- Certifications. The certifications a prospective borrower is required to make are set forth in the Certifications section of the PPP loan application. A representative of the applicant can certify on behalf of the applicant and the business as a whole whether the representative is legally authorized to do so.

PPP Loans

- Interest Rate. The CARES Act permitted an interest rate on PPP loans of up to 4%. The SBA has determined that PPP loans will be subject to an interest rate of 100 basis points or one percent.
- Maturity Date. The CARES Act permitted a maturity date of up to 10 years from the date of the PPP loan application. The SBA has determined that PPP loans will have a maturity of two years from the date of the loan.
- Deferment. The CARES Act permitted deferment of the borrower’s payments under a PPP loan for a minimum period of six months up to maximum period of one year. The SBA has determined

that the deferment period on PPP loans will be six months. Interest will continue to accrue on the loan amount during the six-month deferment period.

- Maximum Amount of Loan. The maximum amount of a PPP loan is 2.5x the average monthly payroll costs of the business. When calculating the average monthly payroll costs:
 1. The business will average the last 12 months of payroll costs, or as directed by the SBA application, the monthly payroll costs of 2019; therefore, a prospective borrower should be prepared to provide lenders with payroll information for both periods as part of its application;
 2. The borrower may only take into account payroll costs of employees whose principal place of residence is within the United States; and
 3. Independent contractors are not considered an employee of the borrower for purposes of calculating payroll costs because such contractors can apply for their own PPP loans.
- Use of Loan Proceeds. The Interim Final Rule specifies that PPP loans may not be used for:
 1. Mortgage prepayments or principal payments; or
 2. Interest payments on any non-mortgage debt obligations incurred before February 15, 2020.

Eligibility

- Multiple Applications. Borrowers that have already applied for a PPP loan under the program may not submit duplicative applications. No eligible borrower may receive more than one PPP loan. This means that if you apply for a PPP loan you should consider applying for the maximum amount available to you or your business.
- Affiliated Businesses. The Interim Final Rule provides no further guidance with respect to additional waivers of the affiliation rules for purposes of determining whether a loan applicant has less than the maximum number of employees permitted for participation in the PPP (the greater of 500 or the specific industry standard), and these rules continue to apply unless specifically waived in the CARES Act. However, the Interim Final Rule indicates that the SBA intends to promptly issue additional guidance with regard to the applicability of affiliation rules to PPP loans.
- Household Employers. The SBA has determined that household employers (individuals that employ household employees such as nannies and housekeepers) are not eligible for a PPP loan as they are not considered a “business” for purposes of the program.

Loan Forgiveness

- Accrual. Loan forgiveness will accrue dollar-for-dollar by the payment by a borrower of documented (i) payroll costs, (ii) rent on leases dated before February 15, 2020, (iii) mortgage interest on mortgage obligations incurred prior to February 15, 2020, and (iv) covered utilities under service agreements dated prior to February 15, 2020, paid over the eight-week period following the date of the PPP loan. Previously, forgiveness accrued for such payments made between February 14, 2020 and June 30, 2020.
 - Payments made to satisfy non-payroll costs (rent, mortgage interest and utilities) are now capped at 25% of the loan forgiveness. This means that 75% of accrued forgiveness **must** come from the payment of payroll costs.

- The Interim Final Rule clarifies that payments made to independent contractors do not count for purposes of loan forgiveness because independent contractors have the ability to apply for PPP loans on their own.
- Principal and Interest. While the CARES Act states that loan forgiveness is capped at the principal amount of the loan, the SBA has determined that loan forgiveness may include any accrued interest at the time of forgiveness.
- Cure for Reductions in Loan Forgiveness. Any reduction in the number of employees or reductions to compensation of employees greater than 25% that occurred between February 15, 2020 and April 26, 2020 **must** be cured before June 30, 2020 for the business to receive the full amount of accrued forgiveness.
 - Note that the program does not currently provide an opportunity to cure any reductions in number of employees or compensation that occur after April 26, 2020.

Interaction with the Economic Injury Disaster Loan (EIDL) Program

If a borrower received an SBA EIDL between January 31, 2020, and April 3, 2020, it can apply for a PPP loan. If the proceeds from a borrower's EIDL were not used for payroll costs, it does not affect the borrower's eligibility for a PPP loan. However, if the borrower's EIDL was used to cover payroll costs, the borrower's PPP loan must be used to refinance its EIDL. If a borrower receives both an EIDL and PPP loan, proceeds from any advance up to \$10,000 on the EIDL will be deducted from the loan forgiveness amount on the PPP loan.

We encourage those interested in applying to the PPP to reach out with any questions regarding their eligibility or questions concerning the application process. We also encourage individuals and businesses to reach out with questions on the CARES Act generally, whether it pertains to the PPP, changes to unemployment eligibility and compensation, or otherwise. Whitman Breed remains dedicated to assisting individuals and businesses through these challenging times.