



## The New SBA Payment Protection Program Loan For Small Businesses – a Q & A

As many of you are aware from news reports, President Trump signed the CARES Act on March 27, 2020. Among other things, the CARES Act established the Paycheck Protection Program, a new business loan program that will be administered through the Small Business Administration (SBA) and SBA-approved lenders. The federally backed business loans available under the Paycheck Protection Program (“**PPP Loan**”) are intended to help qualified businesses pay for various operational expenses for the period February 15, 2020 through June 30, 2020 (the “**Covered Period**”). The following Q & A is intended to answer the basic questions that many of you may have regarding PPP Loans. Please note, this Q & A does not address Section 7(b) Economic Injury Disaster Loans, another type of loan offered through the SBA that your business may qualify for.

### **Is my business eligible to receive a PPP Loan under the new program?**

“Small Business Concerns” are currently eligible to apply for a PPP Loan. These include the following businesses:

- sole proprietorships
- individuals who operate as independent contractors
- self-employed individuals
- small businesses that meet the SBA’s size standard (which may in certain instances exceed 500 employees depending on the company’s NAICS code)
- small businesses with less than 500 employees (subject to the affiliation rule summarized below)
- a 501(c)(3) with fewer than 500 employees
- a tribal business concern that meets the SBA size standard
- a 501(c)(19) veterans organization that meets the SBA size standard

In determining whether a business has 500 or less employees, an applicant must include the full-time and part-time employees of not only the business itself, but also the employees of all of its “affiliates”. An affiliate of a business is one that controls, or has the power to control, the business, or that is under the common control of a third party, whether or not such control is actually exercised. Control is broadly defined in the SBA regulations, and

includes, among other things, voting control, management control, contractual control, and economic dependence. As a result of the affiliation rule, the number of employees of a small businesses that are part of a private equity or hedge fund portfolio, for example, will be aggregated with the number of employees of the private equity or hedge fund, as well as the employees of other companies in the portfolio. This aggregation could result in an applicant for a PPP Loan exceeding the 500 employee threshold, and thus not qualifying for a PPE Loan.

The affiliation rule for the accommodation and food services sector (NAICS 72) will only be applied on a per physical location basis. Franchise operators or businesses that receive financial assistance from an approved Small Business Investment Company are not subject to the affiliation rules.

Businesses that either have received, or have an application pending, for a loan for a duplicative purpose are generally not qualified to receive a loan under this SBA loan program.

As a further qualification, an applicant will likely be required to certify, among other things, that the 7(a) loan is needed to continue operations, and the borrower's affiliates and principal owners (persons owning 20% or more of the applicant's ownership interests) have used all reasonably available funds to pay for the applicant's operations.

### **How much can be borrowed under the new PPP Loan program?**

Up to 2.5 times the borrower's average monthly payroll costs, up to a maximum of \$10 million. Payroll costs include the following:

- salaries, wages, commission or similar compensation
- vacation, parental, family, medical leave or sick leave payments
- cash tips
- payments for group health care benefits, including insurance premiums
- payments for retirement benefits
- payments for state and local taxes assessed on employee compensation
- payments related to dismissal or separation from employment

For sole proprietors, independent contractors and self-employed individuals, payroll costs are the sum of any compensation consisting of wages, commissions, net earnings, or similar compensation, up to an amount not more than \$100,000, pro-rated for the Covered Period.

Excluded from payroll costs are the following:

- compensation of an employee in excess of \$100,000, as prorated for the Covered Period
- payroll taxes, railroad retirement taxes, and income taxes
- compensation of an employee whose residence is outside of the U.S.
- certain qualified sick leave or family leave wages

### **What is the interest rate of a PPP Loan?**

The interest rate on a PPP Loan will not exceed 4%.

### **What is the term of a PPP Loan?**

Up to ten years.

### **Will PPP Loans be secured, or do they require personal guarantees?**

No, PPP Loans will be unsecured loans and will not require personal guarantees.

### **Can my business defer repayment of, or pre-pay, a PPP Loan?**

Yes, payment of principal and interest may be deferred for between six months and one year and may be pre-paid without penalty.

### **Can my business combine a PPL Loan with any other SBA loan?**

A PPP Loan can be combined with a traditional SBA 7(a) loan obtained prior to February 15, 2020 and an Economic Injury Disaster Loan (EIDL), provided that the EIDL loan is not used for the same purpose as the PPP Loan.

### **What can a PPP Loan be used for?**

- salary, wage, and commissions up to \$100,000 per year per individual, prorated for the Covered Period (excluding employees not resident in the U.S. and sick/family leave wages for which a credit is allowed under the Families First Act)
- paid leave
- severance
- group health benefits
- insurance premiums
- retirement benefits
- state and local payroll taxes
- payment of interest on mortgage obligations
- payment of interest on other debt obligations incurred before the Covered Period
- rent/lease payments
- utilities

### **Will my business be required to pay the entire amount of the PPP loan back?**

No, one of the great benefits of the a PPP Loan is that the loan indebtedness may be forgiven and excluded from gross income in an aggregate amount not to exceed the principal amount of the loan for payments made during the Covered Period for:

- payroll costs
- interest payments on mortgages

- rent
- utilities

Note, however, that the forgiveness amount will be reduced if your business cuts employees or reduces an employee's wages by more than 25%. The amount of the reduction is based on reduction formulas that are part of the PPE Loan program.

Also, you should expect that the SBA will require borrowers to submit sufficient documentation regarding expenses to support the borrowers forgiveness claims.

### **What about borrower or lender fees typically charged in connection with an SBA loan?**

All borrower and lender fees have been waived for PPE Loans.

### **How should my business begin the process of applying for a PPE Loan?**

First, contact your business' current bank to see if they are an existing approved SBA lender. If they are, they should be able to guide you through the application process. If your business' bank is not an SBA lender, you can follow this link <https://www.sba.gov/partners/lenders/microloan-program/list-lenders> to obtain the list of SBA lenders on the SBA's website.

### **Where can I get more information about the SBA's Paycheck Protection Program?**

While there are numerous publications already available on the web regarding the Paycheck Protection Program, for the most reliable and accurate information, we suggest you visit the SBA's Paycheck Protection Program website which is available at <https://www.sba.gov/funding-programs/loans/paycheck-protection-program>. You may also contact Jeffrey Swaim in Mirick O'Connell's corporate department with any questions you have about the Paycheck Protection Program at (508) 963-9840.