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On April 1<sup>st</sup> we heard a presentation from Jennings Imel, of the US Chamber of Commerce. This presentation was largely centered on the recently passed CARES Act, and specifically the Paycheck Protection Loan Program.

Trevor D. Large, Partner at Buynak, Fauver, Archbald & Spray LLP and First Vice Chair of the Goleta Chamber of Commerce has prepared the below summary. If you have additional questions, he can be reached at 805.966.7716 or [tlarge@bfaslaw.com](mailto:tlarge@bfaslaw.com).

A more detailed summary of the loan program is detailed below. However, a recap of some of the key questions and answers that followed the presentation are as follows:

**Q: Where can I obtain a Paycheck Protection Loan?**

**A:** Loans can be obtained from any lender that is part of the existing SBA loan program. You do not need to have a prior existing relationship with the lender to apply. However, using your current bank, if it participates, could likely make the loan processing quicker and more likely to succeed.

**Q: Can I rehire employees who have already been laid off? What if they make more from unemployment?**

**A:** Yes. The loan program contemplates that you will rehire employees that may have been laid off already. Any employees that were laid off between February 15 and April 26 must be rehired before June 30, 2020 in order to be counted as part of the loan program. If you offer to rehire one of your employees under the same terms prior to layoff, they should no longer be eligible for unemployment benefits.

**Q: Can I obtain a loan as a sole proprietor or single member business entity?**

**A:** Yes. Eligible entities under the PPP also include sole-proprietors, independent contractors, or other self-employed individuals, such as “gig economy” workers.

**Q: What part of the Loan will be forgiven?**

**A:** Principal amounts on the loans will be forgiven if the amounts are used for eligible uses. These uses include payroll costs (excluding that portion of any salaries over \$100,000); interest on mortgage, rent obligations and certain utility payments. SBA is stating that due to

likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

**Q: How is the loan amount calculated?**

**A:** PPP loans can be as large as 2.5x a business' average monthly payroll costs over the one year period before the loan is made; *However*, the portion of an employee's salary above \$100,000, if any, is not counted as payroll costs. Loans cannot exceed \$10 Million.

**Q: When will I hear about prior SBA loan application? Does that loan affect my ability to obtain a Paycheck Protection Loan?**

**A:** SBA disaster loans can take long time to process. You can obtain a disaster loan and a paycheck protection loan, as long as the funds for each loan are used for different purposes.

**Q: If I have closed by business or furloughed employees, are they eligible for FFRCA paid/family leave?**

**A:** No. If the employee is no longer working due to the unavailability of work, they are not eligible for paid/family leave under the FFRCA. The DOL has provided good guidance at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

These responses, and the below summary have been prepared by Trevor D. Large, Managing Partner at Buynak, Fauver, Archbald & Spray LLP. If you have additional question, he can be reached at 805.966.7716 or [tlarge@bfaslaw.com](mailto:tlarge@bfaslaw.com).

### **Paycheck Protection Program**

Congress passed "The Coronavirus Aid, Relief, and Economic Security Act" (CARES Act), which included an important funding option especially relevant to small businesses, the "Paycheck Protection Program" (PPP). PPP loans must be obtained prior to June 30, 2020. While \$350 billion has been dedicated to PPP loans, the national necessity for these funds means there will be limited funding available and businesses should be prepared to apply quickly once the loans come available.

### **Eligible Businesses**

The PPP is available to a variety of business entities, including for profit and nonprofits, as well as sole-proprietors, independent contractors, and self-employed workers, all with 500 or fewer full- and part-time employees. The business must have been in operation on February 15, 2020, and must have paid employee salaries and payroll taxes or paid independent contractors, as reported on Form 1099-MISC.

There are some additional consideration for certain business structures and industries. For example, PPP is also available to franchises and, for such businesses, SBA's affiliation rules, which aggregate employees of affiliates as one entity, are waived. Entities are affiliates of each

other when one controls or has the power to directly or indirectly control the other, or a third party controls or has the power to control both entities. For accommodation and food services businesses, the 500 employee limit is 500 employees per physical location, not for the entire corporate entity. The affiliation rules are waived solely for the accommodation and food service industries and for franchises.

## **Use of PPP Funds**

Entities that receive loans under the PPP may use these funds to pay expenses incurred between February 15, 2020 and June 30, 2020. These expenses include: payroll costs (such as salaries, wages, vacation, family, medical or sick leave, severance, retirement benefits), costs related to group health care benefits, employee commissions and tips, interest on mortgage obligations, rent, and utilities or interest on other debt. Also important to consider, PPP loan funds cannot be used to pay a portion of salaries over \$100,000.

## **Payment Forgiveness**

One of the key parts of the PPP is the ability to have payment obligations forgiven. Principal amounts on PPP loans will be forgiven if appropriate documentation is submitted to show that the funds were used during this period. The amount of forgiveness is the sum of the following costs incurred and payments made during the 8-week forgiveness period: payroll costs (excluding that portion of any salaries over \$100,000); interest on a “covered mortgage obligation”; “covered rent obligation[s]”; and “covered utility payment[s]”. The amount of a PPP loan that may be forgiven cannot exceed the principal amount of the loan. SBA is stating that due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

Many entities may have already had to take action as it relates to staffing, prior to the implementation of the CARES Act. To encourage employers to rehire workers laid off amid the COVID-19 crisis, employers that rehire previously laid-off employees will not be penalized for having a reduced payroll at the beginning of the forgiveness period. Reductions in the number of full-time employees or in the salary or wages of one or more employees that occurs during the period from February 15, 2020 to April 26, 2020, will be disregarded if eliminated by June 30, 2020.

After the 8-week forgiveness period, business may apply for forgiveness by submitting records confirming the proper use of their funds. Thus, it will be important to keep good records evidencing the use of PPP loan proceeds. Forgiven loan amounts will not result in taxable income to the business.

## **Payment Deferral**

After any loan forgiveness, small businesses may defer payment of remaining principal, interest, and fee balances for at least 6 months and not more than a year. SBA is stating that all payments will be deferred for six months. Interest will accrue during this period. Thus, businesses can get a

substantial portion of their loan forgiven in the first 8 weeks following issuance, and not have to make any payments for six months.

## Loan Terms

PPP loans can be as large as 2.5x a business' average monthly payroll costs over the one year period before the loan is made provided, that the portion of an employee's salary above \$100,000, if any, is not counted as payroll costs. The law states that PPP loans have a maximum interest rate of 4% however the SBA provided **recent guidance that the interest for PPP loans will be 0.5%**. In addition, the law states that PPP loans only start to mature following the date an eligible business applies for loan forgiveness, as described in "Payment Forgiveness" above, and can have a maximum maturity of ten (10) years from such date, however the SBA provided **recent guidance that all loans will have a 2-year maturity**. Because this is an evolving situation, it is important to monitor all of these updates. No collateral is required and the normal personal guarantee requirement for SBA loans is waived.

## How to obtain a PPP Loan

PPP loans will be made by any existing SBA lender or through any federally insured depository institution or federally insured credit union that is participating. You do not need to have a preexisting relationship with the lender to obtain the loan.

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