

Bridging the Gap: An Overview of SBA Loans under the Paycheck Protection Program and Emergency Advances of Credit

In response to the Coronavirus pandemic, the President signed H.R. 748, known as the Coronavirus Aid, Relief, and Economic Security (“**CARES**”) Act on March 27, 2020. The bill provides more than \$2 trillion of aid to individuals and the public and private sector.

Under the Act, a \$349 billion Paycheck Protection Program (“**PPP**”) seeks to provide short term cash-flow through federally guaranteed loans for small businesses impacted by COVID-19. These loans will be administered by the Small Business Administration (“**SBA**”) through the 7(a) loan program.

Importantly, please note that PPP loans are distinct from the 7(b) SBA economic injury disaster loan (“**EIDL**”) program that is already available to small businesses, nor may such loans be used for the same purpose. Interested borrowers should evaluate both programs and choose the path that most closely addresses their needs.

Below is a high-level summary of the provisions relating to PPP loans under the CARES Act, as well as an option to seek emergency advances pursuant to Section 7(b). We expect the U.S. Department of Treasury and the U.S. Small Business Administration to provide guidance on the legislation in the next two weeks. Such guidance will provide further detail on administration of PPP loans and may materially change the summary below. Businesses are encouraged to seek advice from qualified legal counsel before applying for a PPP loan.

PAYCHECK PROTECTION PROGRAM OVERVIEW

Who is eligible for PPP Loans?	<p>The following entities and persons are eligible to apply for PPP loans from approved lenders (as described below):</p> <ol style="list-style-type: none"> 1. For-profit companies, 501(c)(3) nonprofits, and 501(c)(19) veteran’s organization that: <ol style="list-style-type: none"> a. Employs less than 500 employees¹ (including employees of affiliates)²; or
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¹ Under the Act, “Employees” includes all persons employed on a full-time, part-time or other basis.

² The requirement to include employees of affiliates is waived for (1) businesses with a NAICS code beginning with 72 (Accommodation and Food Service), (2) businesses operating as certain franchisees

	<p>b. Meet the SBA size standard for their specific industry;</p> <ol style="list-style-type: none"> 2. Businesses with multiple locations, so long as (i) no single location employs more than 500 employees at any physical specific location and (ii) such businesses have a NAICS code beginning with 72 (Accommodation and Food Service); and 3. Sole-proprietors, independent contractors, and self-employed individuals (<i>e.g.</i>, those working in the “gig economy”). <p>Business are not required to seek other sources of capital, including equity or debt investments from owners with liquid assets.</p> <p>Instead, borrowers are merely required to certify in good faith that (i) the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; (ii) they will use the funds to retain workers and maintain payroll, lease, and utility payments; and (iii) are not receiving duplicative funds for the same uses from another SBA program.</p> <p>Financial businesses, passive business, foreign businesses, gambling businesses, and private clubs, are generally ineligible for PPP loans (or other SBA loans).</p>
<p>Application Deadline</p>	<p>The deadline for applying for PPP loans is June 30, 2020.</p>
<p>Loan Amount:</p>	<p>Eligible borrowers are permitted to seek loans for an amount equal to the lesser of:</p> <ol style="list-style-type: none"> 1. 250 percent of the employer’s average monthly payroll costs,³ measured over the prior twelve months; or

on the SBA’s Franchise Directory, and (3) small businesses that receive financing through the Small Business Investment Company (SBIC) program.

³ Payroll costs are generally broadly defined to include (i) salaries, wages, commissions, or similar forms of compensation, (ii) payments for vacation, parental, family, medical or sick leave, (iii) retirement benefits and certain other employee benefits, (iv) state and local taxes, and (v) certain types of compensation to sole proprietors or independent contractors up to \$100,000. Employee

	2. \$10 million.
Allowable Usage:	<p>During the covered period, proceeds from a PPP loan may be used for:</p> <ol style="list-style-type: none"> 1. Payroll costs; 2. Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; 3. Employee salaries, commissions, or similar compensations; 4. Payments of interest on any mortgage obligation (other than prepayment); 5. Rent payments; 6. Utility payments; or 7. Interest on any other debt obligations that were incurred before February 15, 2020
Loan Forgiveness	<p>Borrowers can apply for loan forgiveness equal to the costs incurred and payments made during the 8-week period immediately following the loan origination date on the following (in each case, to the extent that such obligations were in place before February 15, 2020):</p> <ol style="list-style-type: none"> 1. Payroll costs (excluding compensation over \$100,000); 2. Interest on mortgages; and 3. Payments of rent and utilities. <p>Further forgiveness for additional wages paid to tipped workers may be available.</p> <p>The amount eligible to be forgiven would be reduced in the event of employee layoffs or pay cuts. Specifically, the forgiveness amount would be reduced by:</p>

compensation in excess of \$100,000 annually, compensation of foreign employees, FICA and income tax withholdings, and certain COVID-19 paid leave are explicitly excluded from the calculation.

	<ol style="list-style-type: none"> 1. The product of (i) the forgiveness amount and ii) a percentage equal to (a) the average number of employees per month during the covered period⁴ divided by (b) at the election of the borrower, (1) the average number of full-time equivalent employees per month employed from February 15, 2019 to June 30, 2019; or (2) the average number of full-time equivalent employees per month employed from January 1, 2020 until February 29, 2020 (unless the borrower is a seasonal employer, in which case the average number described in (1) will be used); and 2. The aggregate amount of reduction in total salary or wages for any employee during the covered period that is in excess of 25% of the employee’s salary or wages during the most recent full quarter of employment before the covered period; <i>provided, however</i>, reductions in pay for employees who have an annualized salary of more than \$100,000 are not considered in this calculation. <p>In order to qualify for loan forgiveness, eligible borrowers would be required to submit certain documentation and certifications verifying their employment and payroll levels during the loan period. Note that forgiven loan amounts will not be treated as taxable income.</p>
<p style="text-align: center;">Collateral and Enforcement of Loans</p>	<p>PPP Loans are unsecured, and do not require a personal guarantee.</p> <p>The loans are backstopped by the federal government, in the following proportions:</p> <ol style="list-style-type: none"> 1. Through December 31, 2020: 100% of the PPP loan 2. After December 31, 2020: <ol style="list-style-type: none"> a. 75% for loans exceeding \$150,000; and b. 85% for loans equal to or less than \$150,000
<p style="text-align: center;">Loan Maturity</p>	<p>For any loan that has a remaining balance after reduction based on the loan forgiveness amount, such amount will have a</p>

⁴ The average number of full-time equivalent employees is determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.

	<p>maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness.</p>
<p>Maximum Interest Rate;</p> <p>Applicable Fees</p>	<p>The CARES Act caps interest on PPP Loans at 4 percent and requires all loans to have deferments of principal and interest payments for a period of at least six months and not to exceed one year.</p> <p>PPP loans will amortize in a similar fashion as 7(a) loans, which are generally repaid with fixed monthly principal and interest payments over the life of the loan.</p> <p>Both borrower and lender fees are waived.</p>
<p>Eligibility of Economic Injury Disaster Loan (EIDL) Borrowers</p>	<p>Borrowers who currently have an EIDL loan related to COVID-19 are eligible to apply for a PPP loan, with an option to refinance the EIDL loan into a PPP loan; <i>provided, however</i>, the emergency EIDL grant award will be subtracted from the amount forgiven under the PPP.</p> <p>Existing EIDL borrowers receiving loans that are <u>not</u> related to COVID-19 are also eligible to apply for PPP, but cannot refinance their EIDL loan into a PPP loan.</p>
<p>Loan Timing;</p> <p>Application Procedures</p>	<p>There is no immediate process available today to apply for a PPP loan. Regulations are in the process of being prepared that will implement the program, but do not yet exist.</p> <p>While the program authorizes FDIC banks to make these programs available, it is not a requirement that FDIC banks participate and not all are participating.</p> <p>If time is of the essence for your company, we recommend reaching out to preferred lenders now to determine whether they are already an SBA-certified lender, or whether they intend to become one for this purpose.</p>

ADDITIONAL CONSIDERATIONS FOR LENDERS CONSIDERING THE PPP PROGRAM

<p>Eligible Lenders</p>	<p>Any SBA-certified lender is permitted to make PPP loans, and the CARES Act streamlines the intake procedures to accelerate timing of the loans.</p> <p>Additionally, the CARES Act grants wide authority for the SBA and the Treasury Department to approve new lenders to make Paycheck Protection Loans.</p>
<p>Reimbursement Mechanics for Forgiven Loans</p>	<p>PPP loans that are forgiven under the CARES Act are considered to be cancelled under Section 7(a) of the SBA and would be treated in accordance with the procedures as loans guaranteed under the SBA.</p> <p>The SBA is required to remit payment of principal to lenders (together with interest through the date of such payment) within 90 days of the applicable forgiveness.</p> <p>Lenders and participants of covered loans in the secondary market may make reports to the Administrator of the expected forgiveness amount on a loan or pool of loans identifying 100 percent of the full principal amount of such loans. No later than 15 days after a lender/participant submits any such report that is received by Administrator the Administrator shall purchase the expected forgiveness amount.</p>

EMERGENCY \$10,000 ADVANCES UNDER SECTION 1110

<p>General</p>	<p>Certain borrowers may be eligible to receive emergency \$10,000 advances under SBA Section 7(b)(2) (within 3 days of application) and still apply for an receive a PPP loan under Section 7(a).</p>
<p>Streamlined Eligibility Requirements</p>	<p>Eligible borrowers for these emergency loans are (i) businesses with 500 employees or less, (ii) individuals operating as a sole proprietorship or independent contractor, (iii) a cooperative with not more than 500 employees, (iv) an ESOP with not more than 500 employees, or (v) a tribal small business concern.</p>

	<p>These loans do not require personal guarantees, and the SBA would waive additional requirements for businesses to be operational for at least a year prior to loan or first seek (and fail) to find credit elsewhere.</p> <p>Approval will be based on applicant’s credit score (no need to submit tax return) or other alternative measures. The confirmation for eligibility is done through a self-certification under penalty of perjury.</p>
Permitted Uses of Funds	<p>These emergency funds may be used for the following uses: (i) paid sick leave related to COVID-19, (ii) maintaining payroll, (iii) meeting increased costs to obtain materials, (iv) rent and mortgage payments, and (v) repaying obligations that cannot be met due to revenue losses.</p>
Repayment Procedures	<p>Borrowers are not required to repay any amounts advanced under this section even if subsequently denied a loan under Section 7(b)(2) (eligibility for Disaster Loans under the SBA statute).</p> <p>If a borrower is transferred, or is approved for, a loan under Section 7(a) (i.e., Section 1106), then the advance amount under this Section will be reduced from the loan forgiveness amount for a loan under Section 7(a) for payroll costs (as described above).</p>

Additional Questions? Contact a member of the Haynes and Boone Finance or Corporate Practice Groups at Haynes and Boone, including the following individuals:

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