

KEY PROVISIONS OF THE PAYCHECK PROTECTION PROGRAM (“PPP”)

of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act

1. **Required Certification:** An “Eligible Recipient” applying for a “Covered Loan” under the PPP must make a good faith certification that:
 - a. The uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the Eligible Recipient.
 - b. Funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments.
 - c. The Eligible Recipient does not have an application pending for a loan under the PPP for the same purpose and duplicative of amounts applied for or received under a “Covered Loan”.
 - d. During the period beginning on February 15, 2020 and ending on December 31, 2020, that the Eligible Recipient has not received amounts for the same purpose and duplicative of amounts applied for or received under a Covered Loan.

2. **Eligibility:** Eligibility criteria includes:
 - a. 500 or fewer employees.
 - b. In operation on February 15, 2020.
 - c. The borrower paid salaries and payroll taxes and paid independent contractors, as reported on a Form 1099–MISC.

Employers participating in the PPP loan will lose the Employee Retention Tax Credit(s) under the Families First Coronavirus Response Act (“FFCRA”).

3. **Restrictions on Use of Loan:**
 - a. The loan **may be used** for any purpose allowed under the SBA Business Loan Program. The loan may also be used to pay group health care benefits during paid sick, medical, or family leave, insurance premiums, interest on mortgage obligations, rent or lease payments, utility payments, interest payments on debt obligations incurred before February 15, 2020 and payroll costs.
 - b. The loan may not be used to pay any of the following expenses:
 - i. **Employee compensation above \$100,000 per year (prorated for the period from February 15, 2020 through June 30, 2020).**
 - ii. Withholding and payroll taxes.
 - iii. Compensation for employees whose principal residence is outside the United States.
 - iv. Sick and family leave compensation for which credit is allowed under the Families First Coronavirus Response Act (no “double dipping”).

4. **Lenders:** Loans will be made by either:
 - a. Banks and other commercial lenders with existing authority to make SBA loans.
 - b. Other lenders the SBA determines are qualified to originate and administer the loans.

Borrowers will work directly with their originating lenders to close and administer the loans. However, repayment of the loans will be guaranteed by the federal government.

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5. **Applications:** The application process ends on June 30, 2020.
6. **Maximum Loan Amount:** The lesser of \$10 million or the borrower’s average total monthly “payroll costs” for the one-year period ending on the date the loan is made multiplied by 2.5, plus any refinanced SBA economic injury disaster loan obtained after January 31, 2020. **Any compensation paid to an employee or independent contractor in excess of an annualized amount of \$100,000 is excluded.**
7. **Deferral:** Lenders must allow borrowers to defer payment of both principal and interest for a period of no less than six months and no greater than one year.
8. **Interest:** The interest rate on the loan is capped at 4 percent.
9. **Pre-Payment Penalty:** There are no pre-payment penalties for the loan.
10. **Personal Guarantees:** Personal guarantees are not required or allowed.
11. **Collateral:** No collateral is required or allowed.
12. **Loan Forgiveness:** A borrower **may apply for forgiveness** of a portion of its loan subject to a number of conditions:
 - a. The maximum eligible forgiven amount is equal to the cumulative amount of payroll costs, rent, utility payments and interest paid on mortgages on real or personal property paid during the eight-week period following origination of the loan.
 - b. The costs may include “arrearages” from prior periods.
 - c. The forgiven amount is not included in the borrower’s federal taxable income.
 - d. The amount forgiven cannot exceed the principal balance of the loan.
 - e. The forgiven amount is reduced by multiplying the amount forgiven by a fraction; the numerator is the average number of full-time equivalent employees per month during the eight-week period following origination of the loan and the denominator is, at the election of the borrower, one of the two following values:
 - i. the average number of full-time equivalent employees per month between February 15, 2019 and June 30, 2019; or
 - ii. the average number of full-time equivalent employees per month between January 1, 2020 and February 29, 2020.
 - f. Note that:
 - i. Employees terminated between February 15, 2020, and 30 days after passage of the CARES Act, but rehired by June 30, 2020, qualify in the numerator so long as they’re fully paid as if they weren’t terminated.

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- ii. A borrower must calculate its average number of full-time employees in both 2019 and between January 1, 2020 and February 29, 2020 to determine the most favorable result. A full-time employee is defined as an employee who works, on average, at least 30 hours per week.
- g. The forgiveness amount is also reduced by the amount of any reduction in total salary or wages of any employee during the period beginning on February 15, 2020 and ending on June 30, 2020 that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before February 15, 2020. **However, this computation does not apply to any employees who were paid any wages or salary at an annualized rate of pay in an amount more than \$100,000 in any single pay period in 2019.**
- h. If any portion of a borrower's loan is forgiven, then the borrower cannot defer its 2020 payroll tax obligations.

13. Next Steps:

- a. Contact your banker and practice advisors. If your bank does not provide SBA loans, the SBA website has a list of local and national SBA lenders. The list is greatly expanding under the CARES Act.
- b. Prepare financial statements for 2019 and YTD 2020 ending February 29, 2020.
- c. Prepare payroll reports for 2019 and YTD 2020 ending February 29, 2020.
- d. Detail employee benefits, health insurance, rent or interest on mortgage payments and utility expenses.

This summary of the Paycheck Protection Program (PPP) is not intended to provide clients or others with legal advice nor is it intended to constitute a comprehensive analysis of the PPP or any other part of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. The complete text of the CARES Act can be found at <https://www.congress.gov/bill/116th-congress/house-bill/748/text> . Those seeking legal advice should contact qualified legal counsel.