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THE CARES ACT PAYCHECK PROTECTION PROGRAM FREQUENTLY ASKED QUESTIONS

March 30, 2020

The Coronavirus Aid, Relief and Economic Security Act (the “**CARES Act**”) will provide substantial resources and assistance to individuals, businesses, nonprofits, state and local governments and health care providers. One of those programs, the Paycheck Protection Program (the “**PPP**”), is designed to enable small entities to retain employees during the Coronavirus crisis. Although the details of the PPP have not yet been finalized, pending the release by the SBA of regulations, the following information is designed to provide guidance based on our understanding of where things stand today. We expect that this landscape will be evolving for the foreseeable future and we will provide additional information as it becomes available.

Q. Who is eligible for a PPP loan?

Small businesses and organizations that were operational on February 15, 2020 and paid salaries and payroll taxes, and can certify that the “uncertainty of current economic conditions makes necessary the loan request to support ongoing operations.”

Q. What types of businesses and entities qualify?

- Businesses that have no more than 500 employees or, if greater, the maximum number specified for a business in that industry as determined by the North American Industry Classification System (“**NAICS**”). Here is a link to the Small Business Size Standards by NAICS Industry:

<https://www.law.cornell.edu/cfr/text/13/121.201>

- 501(c)(3) nonprofits, 501(c)(19) veterans organizations, or Tribal businesses with not more than 500 employees;
- Individuals who operate as a sole proprietorship or independent contractor and eligible self-employed individuals;
- Businesses that employ not more than 500 employees at each physical location of the business and that is assigned a NAICS code beginning with 72 (accommodations, food and other services); and
- Businesses operating as a franchise that are assigned a franchise identifier code by the SBA.

Q. Can I apply for a PPP loan even if my business is not profitable?

Yes. The purpose of the PPP is to enable employers to retain jobs and the loans are not dependent upon the revenues or profitability of a business.

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Q. What if I own multiple businesses?

There are existing affiliation rules that the SBA uses to determine whether a business has more than 500 employees. Although we expect that the affiliation rules may be modified, it is not yet clear how affiliated entities will be treated for purposes of the PPP. It is also not yet clear whether affiliated businesses should apply for a single loan or whether they should apply separately.

Q. How is the amount of a PPP loan determined?

- The maximum amount of the loan is the lesser of \$10 million or an amount equal to (i) 2.5 times the average total monthly Payroll Costs (defined below) incurred by the applicant during the one (1) year period prior to the date of the loan (the “**Measurement Period**”) plus (ii) the outstanding amount of any SBA Economic Injury Disaster Loan made to the applicant after January 1, 2020 that will be refinanced by the PPP loan. For seasonal employers, the Measurement Period is the twelve (12) week period from February 15, 2019 or, at the option of the employer, March 1, 2019 through June 30, 2019.
- For businesses that were not in existence during the Measurement Period, average total monthly payroll costs may be calculated on the basis of the period from January 1, 2020 to February 29, 2020.

Q. What are “payroll costs” for purposes of calculating the PPP loan amount?

The following amounts qualify as payroll costs under the PPP (“**Payroll Costs**”):

- Salaries, wages, commissions or similar compensation, including compensation paid to independent contractors and sole proprietors;
- Payments of cash tips or equivalent;
- Payments for severance, vacation, parental, family, medical or sick leave (other than sick and family leave for which a credit is allowed under the Families First Coronavirus Relief Act);
- Payments required for group health benefits, including insurance premiums;
- Payments of any retirement benefits; and
- Payments of state or local taxes assessed on the compensation of employees.

Q. My business is a limited liability company and I and other owners provide services to the business. Is compensation to owners included in the calculation of Payroll Costs?

It is not yet clear whether compensation paid to owners of a business who are not W-2 employees can be considered part of the Payroll Costs of the business.

Q. Does the calculation of average monthly payroll include the entire amount of compensation paid to highly paid individuals?

No. For purposes of calculating the average monthly payroll of a business, the amount of compensation paid to an employee, independent contractor or sole proprietor that can be included in Payroll Costs is capped at an annualized rate of \$100,000 (pro rated for the Measurement Period), and any excess over that amount is disregarded.

Q. What expenses can be paid with PPP loan proceeds? Can the loan only be used for Payroll Costs?

- Loan proceeds may be used for the following expenses (the “**Permitted Expenses**”):
 - Payroll Costs (subject to the \$100,000 cap for highly compensated persons described above)
 - Costs of continuing group health benefits during periods of paid sick, medical or family leave, and the cost of insurance premiums for such benefits
 - Interest on mortgage obligations and other debt obligations incurred before February 15, 2020
 - Rent and utility costs
- Note that PPP loan proceeds cannot be used to pay employees or independent contractors who are not located in the United States.

Q. Do I apply for a PPP loan directly with the SBA or will other lenders be involved? Is there an application fee or other costs involved?

- The PPP loans will be administered by SBA approved lenders (“**SBA Lenders**”) rather than by the SBA directly.
- SBA Lenders are not permitted to charge any application fees or closing costs for a PPP loan.

Q. Can I apply to any SBA Lender?

- SBA Lenders are not required to process applications for all potential borrowers and each SBA Lender may give priority to, and only accept applications from, its existing loan customers. Further, an SBA Lender may elect to handle only loans that are greater than a specific amount.
- Businesses that do not have an existing relationship with a participating bank or financial institution may have to obtain guidance from an SBA representative to identify SBA Lenders that will process their applications.

Q. What information do I need to provide to obtain a loan?

- Businesses that are planning to submit an application for a PPP loan should be preparing the following information:
 - Certification that the uncertainty of current economic conditions makes the loan request necessary to support ongoing operations;
 - Backup information for the calculation of Payroll Costs during the applicable Measurement Period, including state and federal tax records and unemployment insurance filings; and
 - Projections of Permitted Expenses over the eight (8) week period beginning on the date the PPP loan is originated, which is the amount that a business will expect to be forgiven, and documentation supporting such projections.
- Lenders may also require information to satisfy Know Your Customer/Anti-Money Laundering requirements.
- Although it may take some time for the PPP to fully roll-out, businesses should prepare the above information as soon as possible so that they are in a position to submit an application as soon as

the program is up and running. Some SBA Lenders are suggesting that they may be in a position to begin taking applications as early as the week of April 6.

Q. What happens between the time I submit an application for a PPP loan and the date I receive that loan?

It is possible that once an application receives preliminary approval by an SBA Lender, that SBA Lender may provide bridge financing to cover all or a portion of the requested loan amount pending the closing of the PPP loan. However, it is not clear whether the PPP loan proceeds can be used to refinance such a bridge loan. Even if refinancing is permitted, not all SBA Lenders may be willing to provide bridge financing.

Q. If I applied for an SBA Economic Injury Disaster Loan (an “EIDL”), am I still eligible for a PPP loan? Can I use the proceeds of the PPP loan to refinance an EIDL?

- Yes, businesses can apply for both an EIDL and a PPP loan. However, a borrower cannot seek relief for the same harm from both loan programs. For example, if a business obtains a PPP loan to cover payroll costs and rent, it cannot use the proceeds of an EIDL for the same items. Note that an EIDL provides more flexibility with respect to use of proceeds and a business can use the proceeds of an EIDL for general working capital needs that are not covered by a PPP loan.
- A business that applies for a PPP loan can include the amount of an EIDL obtained by the business and use the proceeds of the PPP loan to repay the EIDL.

Q. Can I apply for a PPP loan if I have other existing bank indebtedness?

- A business that has existing bank debt is not prohibited from applying for a PPP loan.
- However, a business that has existing bank debt may be prohibited by the underlying loan documents from obtaining other financing, including a PPP loan. Businesses with existing loans should review their loan documents as soon as possible to determine if a waiver or consent is needed from their existing lender.

Q. Is there any collateral or personal guarantee required to obtain a PPP loan? Is there any prepayment penalty?

- The purpose of the PPP is to provide immediate relief to businesses without “strings attached.” Accordingly, unlike in the case of other SBA loans, the PPP loans are unsecured and no collateral or personal guarantee is required.
- Borrowers will be able to prepay a PPP loan without any prepayment penalty or premium.

Q. I’ve heard that a PPP loan will be eligible for forgiveness. How much of the loan can be forgiven?

- Generally, a borrower will be eligible for forgiveness of a PPP loan in an amount equal to the total aggregate amount of Permitted Expenses (other than interest on non-mortgage obligations) paid during the eight (8) week period following the date of the loan (the “**Covered Period**”).
- The amount forgiven will be reduced proportionally by (i) any reduction in the average number of full-time equivalent employees during the Covered Period compared to the same period in 2019, and (ii) any reduction in total salary or wages of any employee in excess of 25% of his or her total salary or wages during the most recent full quarter prior to the Covered Period during which such employee was employed.

Q: If I haven't laid employees off or reduced employee hours during the period from February 15, 2020 to the date I receive the loan, are my expenses during that period factored in for purposes of the loan forgiveness?

We do not believe that expenses incurred prior to the date the loan is funded will impact the amount of loan forgiveness. Loan forgiveness appears to be related exclusively to the use of the loan proceeds for Permitted Expenses.

Q. How do I apply for forgiveness of a PPP loan?

- Applications for loan forgiveness must be submitted to the SBA Lender that made the PPP loan.
- The following information will be required as part of the application:
 - Verification of the number of employees on the employer's payroll and pay rates, including IRS payroll tax filings and state income, payroll and unemployment insurance filings;
 - Verification of payments of other Permitted Expenses, including cancelled checks, payment receipts and transcripts of accounts; and
 - Certification by a representative of the business that the documentation submitted is true and the amount being forgiven was used in accordance with PPP requirements.

Q. Do you have any recommendations regarding how I should keep track of the use of loan proceeds?

Although there are no specific requirements in the statute, and it is unclear whether a borrower will be required to prove that loan proceeds were used for Permitted Expenses, the ideal method of tracking the use of PPP loan proceeds would be to deposit those proceeds in a separate bank account and use that account exclusively to pay Permitted Expenses. At a minimum, a borrower should keep careful records of Permitted Expenses funded with loan proceeds.

Q. What if a PPP loan is not forgiven? When will I have to repay the loan?

- If a borrower's PPP loan is not forgiven in whole or in part, the amount not forgiven will be carried forward as an ongoing loan.
- The maximum term of an ongoing loan will be 10 years and the maximum interest rate will be 4% per annum. It is not yet clear how the determination regarding the term or the interest rate that will apply will be made.

Q. If a business receives a PPP loan can I also get the benefit of the employee retention credit under the CARES Act?

No, the employee retention credit is not available to a business that receives a PPP loan.

Q. If my business receives a PPP loan, can I also defer payroll taxes under the CARES Act?

If a business receives a PPP loan which is forgiven, the payroll tax deferral is not available to that business. It is not entirely clear whether the payroll tax deferral is available if a PPP loan is not forgiven.

Q. If my business pays rent to an affiliate, can PPP loan proceeds be used to pay that rent? If so, can that rent payment be included in the Permitted Expenses used to calculate my loan forgiveness amount?

We don't yet know whether payments of rent to an affiliate will be considered a Permitted Expense or whether the amount of such payments can be included in the loan forgiveness calculation.

Q. My business is participating in the Connecticut Shared Work Program. Am I still eligible for a PPP loan?

Yes, a participant in the Connecticut Shared Work Program is eligible for a PPP loan. However, it is not yet clear if an employee whose hours are reduced as part of a Shared Work Plan will be considered a full-time equivalent for purposes of avoiding a reduction to the amount of loan forgiveness under the PPP.