

# Coronavirus Aid, Relief and Economic Security Act (CARE's Act)

## Paycheck Protection Program Loans (PPP Loans)

On March 27th, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which creates the Paycheck Protection Program Loan ("PPP Loan"). The PPP Loan program will be administered by the Small Business Administration ("SBA"). The SBA will determine the specific rules governing PPP Loans and establish a procedure to apply – we expect the SBA will finalize rules and procedures by Friday April 3rd or Monday April 6th.

Until the SBA comes out with the official rules and procedures, we do not know for sure what information and documentation will be required from borrowers. That said, this is our best guess of how borrowers can start preparing their application now – this is subject to change as the SBA sets the official rules and procedures:

- Assemble IRS payroll forms – Quarterly 940, 941, or 944 for 2019
- Assemble the last 12 months of reports from your payroll system, starting with your last payroll date and going back 12 months
- Assemble documentation showing the payment of any retirement benefit funded by the company (exclude any payments from employees toward their retirement benefits)
- Assemble documentation showing group health insurance premiums paid by the company under a group health plan
- If the company pays independent contractors that would otherwise be considered employees, assemble IRS 1099 Forms for 2019

### **Payroll Costs**

The amount a business is eligible to borrow will be 2.5x average monthly Payroll Costs for the last twelve months prior to the date of application.

For seasonal employers, average monthly Payroll Costs will be calculated for the 12-week period beginning either 2/15/2019 or 3/1/2019 (borrower's choice). The SBA will set rules for determining if a business is a seasonal employer.

If a business was not in operation before 6/30/2019, average monthly Payroll Costs will be calculated based on January and February of 2020.

Generally, Payroll Costs as defined by the CARES Act are payments of compensation to employees, vacation, sick leave, payments required for group health care benefits, payments of retirement benefits, and payments of any state or local tax assessed on the compensation of employees. Additionally, the CARES Act excludes from Payroll Costs compensation to any single employee in excess of \$100,000 annually, prorated for each period. We are awaiting further guidance from the SBA on how this will be applied.

**Eligibility:** In general, any business (including sole proprietors) or 501(c)(3) non-profit organization that:

- i.) was in operation on 2/15/2020, and
- ii.) has fewer than 500 employees, or
- iii.) has more than 500 employees, but has an NAICS code beginning with 72 and has fewer than 500 employees per physical location (generally restaurants, hotels, and hospitality businesses)

**Loan Amount:** The maximum loan amount is the lesser of:

- i.) \$10 million, or
- ii.) 2.5x average monthly payroll expenses for the preceding 12 months. Essentially 2.5 months of payroll expenses. If the business is a seasonal employer, the amount will be 2.5x the average monthly payroll expense for March, April, May, and June of 2019. If the business has been in operation for less than 12 months, the amount will be 2.5x the average monthly payroll expense for January and February of 2020. Note – any salary/compensation amount greater than \$100,000 annually for a single employee is excluded from this calculation

**Permitted Uses of Funds:** Permitted uses of funds include:

- i.) Payroll costs
- ii.) Costs related to the continuation of group health care benefits
- iii.) Payments of interest (not principal) on debt that was in place before 2/15/2020
- iv.) Rent
- v.) Utilities

**Term / Rate:** Exact terms TBD – Maximum of 10 years / 4.0%

**Collateral:** PPP Loans will be unsecured

**Personal Guaranty:** Personal guaranties are not required

**“Credit Elsewhere Test”:** There is no requirement that borrowers be unable to get financing elsewhere or “credit elsewhere test”.

**Deferment of Payments:** Principal and interest payments will be deferred for at least six months, though borrowers may pre-pay the loan at any time without penalty.

**Loan Forgiveness:** A portion of the loan used for eligible expenses will be forgiven. The amount forgiven will be the following expenses paid in the 8 weeks following the loan origination date:

- i.) Payroll costs
- ii.) Interest (not principal) on a real estate loan that was in place before 2/15/2020
- iii.) Rent payments
- iv.) Utility payments

The amount of loan forgiveness will be reduced if the borrower lays off employees or significantly reduces salaries. The formula determining the amount of reduction is generally summarized below:

- i.) If the borrower has fewer full-time equivalent employees (“FTEs”) on average, per pay period, between 2/15/2020 and 6/30/2020 compared to the same period in 2019, the loan forgiveness

amount is decreased by the percentage of reduction in FTEs. The borrower can also choose to have their number of FTEs for 2/15/2020 – 6/30/2020 compared to 1/1/2020 – 2/29/2020, and that percentage change can instead be used to determine the amount of the reduction, if any.

- ii.) If any employee's salary has been reduced by 25% or more, the dollar amount of the decrease in excess of 25% will be deducted from the loan forgiveness amount. This will not apply to any employee who earned more than \$100,000 on an annualized basis for at least one pay period in 2019.
- iii.) If the borrower has made layoffs or salary reductions but restores the FTE count and salary to the prior levels (per the formulas above) by 6/30/2020, there will be no reduction in the amount of loan forgiveness.

**Loan Forgiveness Documentation:** Borrowers will be required to provide documentation of expenses in order to receive loan forgiveness. Borrowers should thoroughly document expenses that apply for loan forgiveness. Documentation mentioned specifically in the CARES Act includes:

- i.) Documents to verify the number of FTE employees on payroll and pay rates for 2/15/2020 – 6/30/2020
- ii.) Copies of checks, payment receipts, transcripts of accounts, or other documents verifying payments of mortgage interest, rent, or utilities
- iii.) The SBA may require additional documents – TBD

**Borrower Certifications:** Borrowers must make the following "good faith certifications":

- i.) "that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient"
- ii.) "acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments"
- iii.) "that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan"
- iv.) "During the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan"

**Documentation:** Businesses applying for PPP Loans will need to submit:

- i.) Payroll tax filings reported to the IRS for the last 12 months
- ii.) Proof of existence before 2/15/2020 – such as articles of incorporation
- iii.) Other documents as required by the SBA – TBD

**Lender Considerations:** In evaluating the eligibility of a borrower, a lender shall consider whether the borrower:

- i.) Was in operation on 2/15/2020; and
- ii.) Had employees for whom the borrower paid salaries and payroll taxes; or
- iii.) Paid independent contractors, as reported on a Form 1099-MISC.