

# Cashing in on the Federal Paycheck Protection Program

April 6, 2020

The Paycheck Protection Program (PPP) is a loan offered through the Coronavirus Aid, Relief and Economic Security Act (CARES Act), the largest economic stimulus package ever to have been passed by Congress.

PPP loans are administered through the U.S. Small Business Administration (SBA) and made by third-party lenders that have the necessary qualifications to process, close, disburse and service loans made with SBA guarantee.

The purpose of PPP loan is to provide small businesses relief an incentive to keep their existing employees on the payroll. Here's how it works.

The PPP authorizes up to \$349 billion in forgivable loans to be used to fund payroll of their employees during the COVID-19 crisis. The terms for PPP loan are the same for every applicant.

## Loan Guaranty Background

The loans, as provided for in the Interim Final Rule, will be guaranteed under the PPP following the same terms, conditions and processes as other SBA 7(a) loans, with certain changes, including but not limited to the items below:

- The guaranty percentage is 100%.
- No collateral will be required.
- No personal guarantees will be required.
- The interest rate will be 100 basis points or 1%.
- All loans will be processed by all lenders under delegated authority, and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds.

The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. As long as the borrower uses all of the loan proceeds for forgivable purposes, and employee and compensation levels are maintained, the borrower will not be responsible for any loan payment.

The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before Feb. 15, 2020, rent payments on leases dated before Feb. 15, 2020, and utility payments under service agreements dated before Feb. 15, 2020, over the eight-week period following the date of the loan.

However, not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs, and payroll costs are capped at \$100,000 per employee on an annual basis.

### **PPP Loan Eligibility**

As set forth in Interim Final Rule, your business is eligible to apply for a PPP loan if you have 500 or fewer employees whose principal place of residence is in the United States, or your business is one that operates in a certain industry and meets the applicable SBA employee-based size standards for the industry, and you were in operation on Feb. 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.

You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual; you were in operation on Feb. 15, 2020.

Applications for small business and sole proprietorships were allowed to be submitted beginning April 3, 2020 and independent contractors and self-employed individuals could submit their applications beginning April 10, 2020. You will need to complete the PPP Application and provide payroll documentation to your lender. The deadline for filing an application is June 30, 2020.

### **Application Process Considerations**

Applications for participation in the PPP loan program have rocketed upward dramatically since banks kicked off their respective programs. For example, one Midwest bank reported that within days of launching its program, applications swelled from 20,000 to over 220,000.

Businesses seeking to participate in the PPP are encouraged to visit the SBA Resources page. Among the recommendations from the federal government and businesses that have completed the application process include the following:

- Work closely with your primary bank.
- Enlist the help of your accounting/tax advisors.
- Documentation requirements and loan applications vary between banks, so be ready to provide all requested information.
- Have historical payroll documentation available and ready.
- Be ready to amend or add documentation as needed.
- Once approved, closely track and monitor expenses paid by PPP loan proceeds; consider opening a separate bank account for all PPP funds and transactions.

CASHING IN ON THE FEDERAL PAYCHECK PROTECTION PROGRAM Cont.

As the PPP program continues to unfold and subsequent funding appropriations are made by Congress to potentially extend it, the attorneys of Plunkett Cooney's Business Law Department will provide further updates.