

## **The CARES Act: Paycheck Protection Program**

Included in the recently passed CARES Act is the Paycheck Protection Program (PPP). The purpose of the PPP is to keep American workers paid and employed by providing businesses with forgivable loans to offset immediate and direct costs related to closures and staffing reductions due to the COVID-19 pandemic. The PPP is administered by the U.S. Small Business Administration (SBA).

### **HIGHLIGHTS OF THE PAYCHECK PROTECTION PROGRAM**

- Loans available to any business with 500 or fewer employees (which may be greater for certain industries).
- Funds used towards payroll costs, paid sick or medical leave, insurance premiums, mortgage and other debt obligation interest, rent and utility payments may be eligible for up to 100% loan forgiveness.
- Maximum loan amount is \$10 million and is based on payroll costs.
- Borrowers who re-hire workers previously laid off will not be penalized for having a reduced payroll.
- Loans will be made through current SBA lenders and other authorized financial institutions.

### **WHAT TYPES OF BUSINESSES AND ENTITIES ARE ELIGIBLE?**

- Any business (including 501(c)(3) non-profit organizations) with 500 or fewer employees (or higher based on the businesses' industry) is eligible to receive a loan.
- Businesses in the hospitality or food service industries with more than one location that employ 500 or fewer employees per location are also eligible to participate in the program.
- For purposes of determining whether a business is eligible, the term "employee" is defined to include individuals employed on a full-time, part-time or other basis.
- Sole-proprietorships, independent contractors and other self-employed individuals are also eligible to participate in the program.

### **HOW IS THE LOAN SIZE DETERMINED?**

- The loan amount a business is eligible for is calculated as the sum of:
  - 2.5 times (250%) the average total monthly payroll costs (defined below) incurred during the 1-year period before the date the loan is made, and
  - The outstanding loan amount of an SBA Emergency Economic Injury Disaster Loan.
- The maximum loan amount is \$10 million.
- If you were not in business during the period of February 15, 2019 – June 30, 2019, average total monthly payroll costs will be based upon the period beginning January 1, 2020 and ending on February 29, 2020.

## WHAT IS THE DEFINITION OF PAYROLL COSTS?

- Payroll costs are defined to include:
  - Compensation paid to employees in the form of salary, wages, commission or similar compensation
  - Cash tips or equivalent
  - Vacation, parental, family, medical or sick leave
  - Separation payments
  - Healthcare benefits, including insurance premiums
  - Retirement benefits
  - State or local tax assessed on the compensation of employees
- For a sole proprietor or independent contractor: payroll costs include any wage, commission, income, or net earnings from self-employment not in excess of \$100,000.
- Payroll costs expressly exclude:
  - Compensation paid to an individual employee in excess of an annual salary of \$100,000, as prorated for the period of February 15, 2020 to June 30, 2020
  - Compensation paid to non-U.S. employees
  - Certain Federal payroll taxes (including FICA and FUTA), and
  - Qualified sick and family leave wages under the Families First Coronavirus Response Act

## WHAT ARE INTEREST RATES AND OTHER TERMS OF THE LOAN?

- The loan has a term of 2 years and a fixed interest rate of 1%
- Borrowers will not be charged any prepayment fees.
- Lenders are required to provide complete payment deferment (including payment of principal, interest and fees) for six months. Interest, however, will continue to accrue over this period.

## WHAT ARE ALLOWABLE USES OF THE LOAN PROCEEDS?

- Payroll costs (as noted above)
- Costs related to the continuation of group healthcare benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Employee salaries, commissions, or similar compensations (see exclusions above)
- Payments of interest on any mortgage obligation\*
- Rent (including rent under a lease agreement)\*
- Utility payments\*
- Interest payments on any other debt obligations\*

*\*To qualify, these debts, services agreements and lease arrangements must have been in force prior to February 15, 2020.*

## HOW MUCH OF LOAN WILL BE FORGIVEN?

- Borrowers are eligible for loan forgiveness equal to the loan amount used towards the following expenses over the 8-week period beginning on the loan origination date:
  - Payroll costs (as defined above)
  - Interest payments on any mortgage incurred prior to February 15, 2020
  - Rent under any lease in force prior to February 15, 2020
  - Utilities for services beginning prior to February 15, 2020
- Note that decreases in either payroll costs or employee counts during the covered period (8 weeks following the loan origination) may reduce the amount of loan eligible to be forgiven.
  - Employee Counts: Loan forgiveness will be reduced if a business decreases the number of full-time equivalent employees
  - Payroll Costs: Loan forgiveness will be reduced if a business decreases wages by more than 25% for any employee who made less than \$100,000 annualized in 2019
  - Re-Hiring: To encourage re-hiring, a business will have until June 30, 2020 to restore their full-time employment and payroll costs for any layoffs which were made between February 15, 2020 and April 26, 2020 without having their forgiveness amount reduced
- Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

## WHAT OTHER ADDITIONAL INFORMATION IS IMPORTANT TO KNOW?

- Any amount of loan principal that is forgiven will not be included in the borrower's taxable income.
- The business cannot have an application for a loan pending under Section 7(a) of the Small Business Act or otherwise receive funds for the same uses from February 15, 2020 until January 1, 2021.
- The CARES Act waives borrower and lender fees for participation, the credit elsewhere tests and collateral and personal guarantee requirements.
- Portions of the Payroll Protection Program rules have been purposefully omitted for readability. Please contact your lender and/or business advisor for more details.

## WHAT ARE THE NEXT STEPS?

- Businesses should be reviewing and gathering information to support their prior twelve months payroll costs. They should also be determining the amount of those payroll costs which are attributable to employees receiving compensation in excess of \$100,000 (as prorated for the period February 15, 2020 to June 30, 2020)
- Lenders may begin processing loan applications as soon as April 3, 2020. Business should consider beginning to prepare their applications. You can view a sample application [here](#) to see the information that will be requested from you.
- Continue to review and analyze other avenues of possible financing and cashflow assistance through areas like payroll tax credits and payment deferrals

## OTHER RESOURCES

- U.S. Senate Committee on Small Business & Entrepreneurship created frequently asked questions on the Paycheck Protection Program which can be accessed [here](#).
- U.S. Chamber of Commerce created a Coronavirus Emergency Loans Small Business Guide and Checklist which can be accessed [here](#).

Abdo, Eick & Meyers will continue to follow new legislative developments and programs being made available to the small business community. Please feel free to [reach out](#) to us if you have questions or concerns. We are here to help.