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## Paycheck Protection Program Loans Explained: Some Frequently Asked Questions

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### **Q: What is the CARES Act?**

**A:** The CARES Act is a \$2.2 trillion relief act entitled Coronavirus, Aid, Relief, and Economic Security (CARES) Act, which includes the “Paycheck Protection Program” (PPP). Below are the answers to those commonly asked questions.

### **Q: What is the Paycheck Protection Program?**

**A:** Under the CARES Act Congress set aside \$349 billion to be used by the Small Business Administration (SBA) to guaranty and forgive loans that were obtained and used to keep workers employed and paid during the “covered period” – which is defined as February 15, 2020 through June 30, 2020. The CARES Act expands upon the current 7(a) loan program under the Small Business Act and creates a new category of loans of up to \$10 million for certain qualified small businesses. These loans are intended to be forgivable if the borrower maintains employees and otherwise complies with the CARES Act.

### **Q: Who is eligible to receive a PPP Loan?**

**A:** Any business that was operational as of February 15, 2020 and meets one of the following criteria is eligible:

- Does not have more than 500 employees or the maximum number of employees specified in the current SBA size standards, whichever is greater; or
- If the business has more than one location and has more than 500 employees, does not have more than 500 employees at any one location and the business' primary NAICS code starts with “72” (Accommodation and Food Service); or

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- Is a franchisee holding a franchise listed on the SBA's registry of approved franchise agreements; or
- Has received financing from a Small Business Investment Corporation.

It is important to note that businesses eligible for PPP loans include sole proprietorships and self-employed individuals as long as they meet one of the above criteria as well as certain nonprofit organizations (must be tax-exempt under Section 501(c)(3) of the Internal Revenue Code), qualified veterans' organizations and certain Tribal business concerns. An eligible self-employed individual, independent contractor, or sole proprietorship seeking a PPP loan will need to submit documentation to establish its/his/her eligibility such as payroll tax filings reported to the Internal Revenue Service, Forms 1099-MISC, and income and expenses from the sole proprietorship, as determined by the SBA.

Additionally, to make loans under PPP easier to obtain by a greater number of businesses, the CARES Act waives many of the SBA's "affiliation rules" as well as the requirement that the business not be able to obtain a loan from any other source.

### **Q: How much can you borrow under PPP?**

**A:** The maximum loan amount is set by formula as the lesser of \$10 million or the product obtained by multiplying the average total monthly payments for payroll costs during the 1-year period before the loan is made (although there is a different measurement period for seasonal businesses) by 2.5. For example: if the loan was made on April 1, 2020, and average monthly payroll costs for the period April 1, 2019, to April 1, 2020, were \$3,000,000, the maximum loan amount would be \$7,500,000. If the borrower has previously received a loan under the Economic Injury Disaster Loan (EIDL) program, the outstanding balance of the EIDL loan can be added to the formula amount and refinanced as part of this new program.

If the borrower was not in business between February 15, 2019 and June 30, 2019, the maximum loan amount would be 2.5 times the average total monthly payments for payroll costs between January 1, 2020 and February 29, 2020 plus the outstanding balance of any EIDL loan, subject to \$10 million maximum.

### **Q: What are "payroll costs"?**

**A:** For employees, they are the sum of wages (up to \$100,000/year/employee) plus many fringe benefits such as paid sick and vacation time, retirement benefits, health care benefits as well as state or local taxes assessed against employee but paid by business. For sole proprietors and independent contractors, payroll costs are any wage or other income not to exceed \$100,000/year. Payroll costs must be for an employee whose principal place of resident is in the United States and there are certain exclusions.

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### **Q: What are the key terms of these loans?**

#### **A:**

- No personal or collateral guarantee will be required.
- The eligible business does not have to certify that it is unable to obtain credit elsewhere.
- Eligible businesses must make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; that funds will be used for a permitted purpose; and that they are not receiving funds from another SBA program for the same uses.
- Maximum term of loan is 10 years.
- Interest rates cannot exceed 4% (may be less but cannot be more)
- Payments are deferred for not less than 6 months nor more than 1 year.
- No prepayment penalty.

### **Q: What are the loan forgiveness provisions?**

**A:** All PPP loans can have all or a portion of the loan forgiven. The loan forgiveness will equal the amount spent by the business in the 8-week period after the loan closed on the following items (not to exceed the original principal amount of the loan):

- payroll costs (not to exceed \$100,000 of annualized compensation per employee); and
- payments of interest on any mortgage loan incurred prior to February 15, 2020 (excluding any prepayments made under such loan); and
- payment of rent on any lease entered into prior to February 15, 2020; and
- payment on any utility.

As an added bonus to businesses, the amount forgiven is not considered taxable income to the business.

The forgiveness will be reduced by:

- a percentage equal to average number of full-time employees during the “covered period” (which is defined as the 8-week period commencing on the loan origination date) divided by either average number of full-time employees between Feb. 15, 2019 and June 30, 2019, or average number of full-time employees between Jan. 1, 2020 and Feb. 29, 2020; and
- a dollar for dollar reduction in the pay of any employee making less than \$100,000/year where the pay reduction exceeds 25% of the employee's compensation during 2019. A business will not be penalized by a

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reduction in the amount forgiven for termination of an employee made between February 15, 2020 and April 26, 2020 as long as the employee is rehired prior to June 30, 2020.

### **Q: What does the company have to do to have the loan forgiven?**

**A:** The forgiveness of the PPP loan is not automatic; the business must apply to the lender (not the SBA) for forgiveness and provide supporting documentation; and detailed, complete and accurate accounting and recordkeeping will be essential to taking advantage of the forgiveness feature of PPP loans.

### **Q: How do I apply for the loan?**

**A:** Because PPP is an expansion of the SBA 7(a) loan program, any bank or lending institution that has “delegated authority” status from the SBA can make a loan to an eligible business (without the need to get SBA approval for any individual loan). The CARES Act also allows the Department of Treasury to establish a process by which lending institutions that are not currently authorized to offer SBA loans will be able to participate during the declared national emergency. So check with your existing bank or lender to see if they are authorized to make loans under PPP.

### **Q: What's in it for lenders?**

**A:** In an effort to entice lenders to make loans under PPP to get capital back into the markets and economy generally, the CARES Act shifts almost all of the risk of these loans from the lenders to the SBA. PPP loans made to eligible businesses are SBA guaranteed at 100% through December 31, 2020. After that date, the guarantee percentages will be 75% for loans exceeding \$150,000 and 85% for loans equal to or less than \$150,000. If the loan is forgiven, the SBA pay the lender the amount forgiven within 90 days of all or a portion of the PPP forgiven. The risk rating of PPP loans under risk-based capital requirements is 0%.

In addition, the SBA will pay lenders fees for processing PPP loans as follows:

- 5% of the loan for loans up to \$350,000; and
- 3% of the loan for loans between \$350,000 and \$2 million; and
- 1% of the loan for any loan that is \$2 million or more.

Fees to lenders are payable within 5 days of disbursement of the loan.

Pullman & Comley has experienced and knowledgeable professionals familiar with SBA lending programs working hard to assist their clients during these unprecedented and uncertain times. For specific guidance or more information, whether you are a business applying for a PPP loan or a lender looking to make a PPP loan, please contact Brion Kirsch. For more information on the CARES Act and guidance during concerning the

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impacts of the COVID-19 crisis, please visit our [COVID-19 Resource Page](#).

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