COVID-19 - Small Business Relief from the Payroll Protection Program

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On March 27, in response to the economic strain suffered by American businesses and workers resulting from the COVID-19 pandemic, Congress passed and President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act. A key component of the CARES Act is the Paycheck Protection Program (PPP), a $349 billion loan program backed by the Small Business Administration (SBA), to help small businesses stay afloat during the pandemic.

The PPP provides revenue replacement funds to small businesses to cover payroll and other near-term operating expenses, while providing a strong incentive for employers to retain their employees. Provided the funds are used for such purposes, the loans are forgiven in full at the time the first payment becomes due. The US Treasury, in conjunction with the SBA, has released initial guidelines. The following is a general overview of the requirements for applying for and receiving the loans, as well as loan forgiveness.

Who is Eligible for the PPP Loan

A small business with fewer than 500 employees (includes full-time and part-time employees).
A small business in certain industries with more than 500 employees that otherwise meet the SBA’s size standard.
A 501(c)(3) charitable organization with fewer than 500 employees.
An individual who operates as a sole proprietor, independent contractor, or is self-employed and regularly carries on a trade or business.
A tribal business concern that meets the SBA size standard.
A 501(c)(19) Veterans Organization that meets the SBA size standard.

Application Process and Deadlines

Qualifying small businesses may file applications with any certified lender,
federally insured depository intuition, credit union, etc., that are certified SBA lenders. Other lenders will become available once they are approved by the SBA and enrolled in the program. The Paycheck Protection Loan Application is included as a downloadable link below. The application process begins April 3 for small businesses and sole proprietors and April 10 for independent contractors and self-employed individuals. The PPP is open for applications until June 30, 2020, but it is advisable to apply as soon as possible given the cap on the program and anticipated interest.

Certifications Required by Lenders

The business and each 20% or greater owner must certify in good faith to the following:

The current economic uncertainty makes the loan necessary to support ongoing operations.
The business will use the funds to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments. Documentation verifying the number of full-time equivalent employees on payroll and the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following the loan will be provided to the lender.
During the period beginning February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program. Additional requirements may be announced by the Treasury, particularly with respect to independent contractors and sole proprietors.
No collateral or personal guarantees are required.
Neither the government nor lenders will charge small businesses any fees. The SBA will waive the usual requirement that applicants need to first look for other funds before applying.

Use of Loan Proceeds

Proceeds from the loan should be used for:

Payroll costs (capped at $100,000 annual salary for each employee), including benefits (vacation, family/medical/sick leave, group health, retirement benefits), and state/local taxes assessed on compensation.
Interest on mortgage obligations, incurred before February 15, 2020.
Utilities, for which service began before February 15, 2020.

Amount of Loan Available

The loan amount will be equal to 2.5 times the borrower’s average monthly
payroll costs, not to exceed $10 million. Payroll consists of salary, wages, commission, tips, etc. (with annualized cap of $100,000 per employee), as well as the benefits and taxes referenced above. For businesses not operational in 2019, the loan amount is 2.5 times the average total monthly payroll costs incurred for January and February 2020.

Loan Forgiveness

Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities paid during the 8-week period beginning on the date the loan originated.

Due to expected high participation, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs (allowable operational expenses).

Forgiveness will be reduced if the full-time employee headcount is reduced, salaries decrease by more than 25% for any employee making less than $100,000.

Applicants have until June 30, 2020 to restore full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

Requests for forgiveness are to be submitted to the lender servicing the loan, and should include documentation verifying the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations.

The loan forgiveness amount cannot exceed the loan’s principal amount, and any loan forgiveness amount will not be treated as gross income for federal income tax purposes.

Loans not Forgiven

PPP loans not qualifying for forgiveness due to disqualified use of the proceeds will have an interest rate of 0.5%.

Interest payments are deferred for six months, but interest will continue to accrue over this period.

The loan will be due in two years; there are no prepayment penalties.

If the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges against the borrower.

It is anticipated that the U.S. Treasury and SBA will continue updating guidance for the Payroll Protection Program. We will provide these updates as they materialize.

I am available to answer any questions about the Payroll Protection Program, or any other business matter, and can be contacted at chunter@beckerlawyers.com.