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UPDATED: Paycheck Protection Program Offers Forgivable Loans to Businesses Affected by COVID-19

By Ivan H. Golden

Beginning on Friday, April 3, small businesses can apply for forgivable loans of up to $10 million as part of the Paycheck Protection Program ("PPP"), a pillar of the $2.2 trillion stimulus bill enacted on March 27, 2020, in response to the COVID-19 pandemic.

PPP loans are available to nearly every business with 500 or fewer employees and to some with more than 500 employees. The loans will be administered by the U.S. Small Business Administration ("SBA") and will be offered through existing SBA lenders, as well as other federally insured banks, federally insured credit unions, and other lending institutions.

Interest in the PPP loan program is expected to be intense, and loans will be offered on a first-come, first-served basis, so businesses should apply as soon as possible to ensure their applications are accepted before the $349 billion PPP loan fund is fully subscribed.

Borrowers generally may use the proceeds from a PPP loan for qualified payroll, group health care benefits (including premiums), rent, utilities, mortgage interest, and interest on other debt. Amounts spent within the first eight weeks after origination on qualified payroll, mortgage interest, rent, and utilities are forgiven (and the forgiveness is excluded from gross income), provided the borrower maintains its payroll.

Who is eligible for a PPP loan?

Nearly all businesses with 500 or fewer employees, including nonprofit organizations that are exempt under Section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, are eligible to apply for PPP loans, and the SBA is waiving many of its typical requirements because of the unprecedented nature of the COVID-19 pandemic. Businesses in the accommodations and food service industries are eligible to apply for loans even if they have more than 500 employees, provided they do not have more than 500 employees at any one location. Certain sole proprietors, independent contractors and self-employed individuals also are eligible to apply for PPP loans.

The SBA's affiliation rules generally apply to businesses applying for PPP loans, other than businesses in the accommodation or food service industries. Under SBA affiliation rules, two or more businesses are affiliates, and their employees are aggregated, if one business has the right to control the other, or a third person or persons has the right to control both – even if the right is not exercised. Thus, two or more businesses that are affiliated should consider applying on that basis so they can obtain the largest possible loan that takes into account all of their payroll costs. The SBA is expected to issue further guidance with respect to the applicability of its affiliation rules to PPP loans shortly.

How much can a business borrow?

An eligible employer can borrow up to 2.5 times its average monthly payroll costs for the one-year period preceding the loan, not to exceed $10 million. For example, an eligible employer whose average monthly payroll for the preceding 12-month period was $2 million could borrow up to $5 million.

Average monthly payroll includes all wages, compensation and similar amounts paid to employees; vacation pay, parental, family, medical or sick leave; dismissal or separation pay; payments required to provide group health care benefits including insurance premiums, payment of retirement benefits; and state and local taxes assessed on employee compensation. However, average monthly payroll specifically excludes the following:

- compensation in excess of $100,000 per employee, pro-rated for the applicable period;
- the employer or the employee's share of payroll taxes for the period beginning February 15, 2020 and ending June 30, 2020;
- amounts paid to an employee whose principal residence is outside the United States; and
- qualified sick or family leave for which the employer obtains a credit under the Families First Coronavirus Response Act.

An otherwise eligible employer that was not in business between February 15, 2019 and June 30, 2019 can still apply for a loan; however, the employer's average monthly payroll costs would be based on its payroll costs for the period beginning January 1, 2020 and ending on February 29, 2020, rather than the 12-month period preceding the date of the loan.

If a business has already applied for or received an Economic Injury Disaster Loan ("EIDL"), the outstanding amount of the EIDL, less any advance under the EIDL, generally is added to the PPP loan amount. The outstanding EIDL is then refinanced into the PPP loan. For example, a business with annual payroll of $1.2 million and an outstanding EIDL loan of $10,000 would qualify for a PPP loan of up to $260,000, determined as follows:

Annual Payroll:	$1.2 million
Average Monthly Payroll:	$100,000
Multiply by 2.5:	$250,000
Add $10,000 EIDL:	$260,000

What can loan proceeds be used for?

Loan proceeds may be used for any of the following expenses:

- payroll costs, which include salaries, wages, and other compensation paid to employees (except to the extent in excess of an annual salary of $100,000, pro-rated for the covered period, or to an employee whose principal place of residence is outside the United States); payments for group health care benefits, including insurance premiums; payments for vacation, parental, family, medical, or sick leave (other than qualified sick or family leave for which a credit is allowed under the Families First Coronavirus Response Act); and severance payments to former employees;

- costs related to the continuation of group health insurance benefits, including insurance premiums, during periods of paid sick, medical, or family leave;
- payments of interest on any mortgage obligation;
- rent;
- utilities; and
- interest on any other debt incurred before February 15, 2020

However, at least 75 percent of the PPP loan proceeds must be used for payroll costs.

What are the terms of the loan forgiveness?

Amounts borrowed by an eligible employer will be forgiven, and the amount forgiven will be excluded from the borrower's gross income (i.e., the borrower will not have taxable cancelation-of-debt income in respect of the forgiven amount), to the extent loan proceeds are used within the first eight weeks after origination to pay any of the following expenses:

- qualified payroll costs;
- interest on a mortgage with respect to real or personal property that was incurred before February 15, 2020;
- rent under a lease agreement in force before February 15, 2020; and
- utility payments with respect to a utility service that began before February 15, 2020.

Consistent with the requirement that at least 75 percent of PPP loan proceeds must be spent on payroll costs, at least 75 percent of the forgiveness amount must have been used for payroll.

As noted above, qualified payroll costs do not include compensation paid to any employee in excess of $100,000, pro-rated for the applicable period; the employee or employer's share of payroll taxes; or compensation paid to individuals who do not live in the United States.

The amount forgiven is reduced proportionally if, during the eight-week period beginning on the loan origination date, the employer reduces the number of its employees or reduces the salary of any employee who earned $100,000 or less in 2019 by more than 25 percent However, an employer will not have its forgiveness amount reduced if, on or before June 30, 2020, it rehires employees who were laid off and eliminates any reductions in salary of employees earning $100,000 or less.

What are the terms of the loans that are not forgiven?

Amounts that are not forgiven generally must be repaid over two years at a fixed interest rate of 1 percent. In addition, lenders are required to defer repayment of interest and principal for six months from the origination date of the loan.

What are the other requirements to obtain a PPP loan?

In order to obtain a PPP loan, borrowers must certify, among other things, that (i) the loan is necessary to support ongoing operations; (ii) loan proceeds will be used to retain workers or for other qualified purposes; and (iii) they have not applied for or received another SBA loan for the same purpose. As noted above, businesses that have already applied for or received an EIDL may apply for a PPP loan; however, if the application is accepted the EIDL must be refinanced into the PPP loan.

Unlike some other SBA loans, there is no fee to apply for a PPP loan, borrowers are not required to certify that they cannot obtain credit elsewhere, and neither a personal guarantee nor any collateral is required.

How can my business apply for a PPP loan?

Businesses interested in applying for a PPP loan should do so as soon as possible through their existing bank or through any bank or lender that is authorized to issue PPP loans. As noted above, demand for PPP loans is expected to be overwhelming, and loans will be offered on a first-come, first-served basis. Unlike some other SBA loans, for which borrowers may apply directly on the SBA's website, PPP loans will be offered only by local banks and other financial institutions.

Although some banks may begin processing applications as early as Friday, April 3, many banks have indicated they need more time to understand the PPP loan program and may not be able to process loans for several days or weeks. In addition, there are a number of features of the PPP loan program that remain unclear, and the SBA and the Department of the Treasury are expected to issue further guidance. Until more information is available, businesses that are considering applying for a PPP loan should consider doing some or all of the following to ensure they are prepared to apply:

- contact your bank or financial institution to determine if they are offering PPP loans;
- carefully review the PPP loan application available on the SBA's website;
- compile electronic copies of recent federal and state income tax, payroll tax, and unemployment insurance returns and filings; banks will likely need copies to verify the amount of payroll costs;
- have electronic copies of recent financial statements; and
- if your business needs cash immediately to stay open, consider applying for an EIDL or a loan or line of credit with your bank.

Please visit our website for further guidance from our COVID-19 Response Team and to read our related Alerts. To sign up to receive future COVID-19-related Alerts directly, please subscribe here.

If you have questions, please reach out to your primary contact at Hahn Loeser, or contact one of the attorneys listed below for more information.

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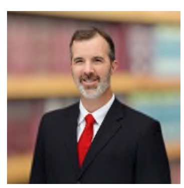

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