

RECENT GUIDANCE FOR THE PAYCHECK PROTECTION PROGRAM

The Paycheck Protection Program (“PPP”), enacted as part of the federal government’s response to COVID-19, authorizes up to \$349 billion in forgivable loans to small businesses to pay their employees during this period of economic disruption. Recently, the Small Business Administration (“SBA”) with support from the Department of Treasury released limited guidance for borrowers and lenders. Regulations and additional guidance from the SBA remain outstanding, but our team remains committed to keeping borrowers and lenders updated as information becomes available. Below is an overview of the PPP following the limited guidance issued by the SBA.

Information for Borrowers

Loan Overview: The PPP is a modification of the SBA’s 7(a) loan program, in which the SBA guarantees loans made by participating lenders to eligible small businesses. Although the program is open until June 30, 2020, the SBA is encouraging borrowers to apply as soon as possible because there is a funding cap, and lenders need time to process the loan. Below is the high-level framework of the loan terms:

- All loan terms will be the same for every borrower.
- The interest rate for the PPP loan is a 0.50% fixed rate.
- The loan is due in two (2) years.
- There are no prepayment penalties or fees if the loan is paid earlier than two (2) years.
- All payments are deferred for six (6) months; however, interest will continue to accrue over this period.
- The borrower is not required to pledge any collateral for these loans.
- The borrower is not required to provide a personal guarantee for the loan. However, if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges.
- To help get small businesses the funds they need, the SBA is waiving the usual requirement that borrowers try to obtain some or all of the loan funds from other sources (i.e., the Credit Elsewhere requirement).

Permissible Uses of the PPP Loans: To maintain eligibility for forgiveness, borrowers should use the proceeds from the PPP loans on:

- Payroll costs, including benefits;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

Payroll Costs:

- Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);

- Employee benefits including costs for vacation, parental, family, medical, or sick leave; an allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;
- State and local taxes assessed on compensation; and
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.

Size of the Loan: The maximum size of the loan will be the lesser of (a) \$10,000,000, or (b) the borrowers average monthly payroll costs from the last year (excluding employees making over \$100,000 annualized) multiplied by 2.5. If you are a seasonal or new business, you will use different time periods applicable to your calculation.

Application Overview: Under the PPP, borrowers can apply for and receive loans to cover their payroll and other specified expenses through an existing SBA lender or any participating federally insured depository institution, federally insured credit union, and Farm Credit System institution. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. You should consult with your local lender to determine if it is participating in the program and visit www.sba.gov for a list of SBA lenders.

Eligible Applicants: Unlike other SBA programs that limit eligibility to for-profit businesses, the PPP is available to for-profit companies, nonprofits organized under Section 501(c)(3) of the Internal Revenue Code of 1986, veterans organizations, tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors. Eligibility is limited to businesses with 500 or fewer full-time and part-time employees. However, businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries.¹ Additionally, the SBA has waived affiliation standards under the PPP for small businesses:

- in the hotel and food services industries (businesses with a NAICS code beginning with 72);
- that are franchises in the SBA's Franchise Directory; or
- that receive financial assistance from small business investment companies licensed by the SBA.

Application Dates: borrowers can apply for and receive loans through an existing SBA lender or any participating lender beginning:

- Small Businesses and Sole Proprietorships – April 3, 2020.
- Independent Contractors and Self-Employed Individuals – April 10, 2020.

Application Materials: Borrowers will need to complete and submit the Paycheck Protection Program loan application ([SBA Form 2483](#)) with any required documentation to an approved lender that is available to process your application by June 30, 2020. Borrowers will be required

¹ Information on size standards can be found at <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>

to provide their lender with payroll documentation and any other documentation requested. Lenders may vary in the documentation required. However, to avoid delays, borrowers should be prepared to submit the following documents at the time of application:

- A complete copy, including all schedules, of the most recent Federal Income Tax returns for the applicant business (or an explanation if not one is not available).
- Request for Transcript of Tax Return ([IRS Form 4506T](#)), completed and signed for the applicant business, each principal owning 20 percent or more of the applicant business, each general partner or managing member; and for any owner who has more than a 50 percent ownership in an affiliate business.
- A current schedule of liabilities listing all fixed debts ([SBA Form 2202](#) may be used).
- A Personal Financial Statement ([SBA Form 413](#)) completed, signed, and dated by the applicant (if a sole proprietorship), each principal owning 20 percent or more of the applicant business, and each general partner or managing member.

Additionally, small businesses should be prepared to provide the lender with the following documents within seven (7) days of the information request:

- A complete copy, including all schedules, of the most recent Federal Income Tax return for each principal owning 20 percent or more, each general partner or managing member, and each affiliate when any owner has more than a 50 percent ownership in the affiliate business. Affiliates include, but are not limited to, business parents, subsidiaries, and/or other businesses with common ownership or management.
- If the most recent Federal Income Tax return has not been filed, a year-end profit-and-loss statement and balance sheet for the tax year.
- A current year-to-date profit-and-loss statement.
- Additional Filing Requirements ([SBA Form 1368](#)) providing monthly sales figures.
- Fee Disclosure Form and Compensation Agreement ([SBA Form 159D](#)).

Loan Certification: As part of your application, each borrower will need to certify in good faith that:

- Current economic uncertainty makes the loan necessary to support ongoing operations.
- The funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments.
- You have not and will not receive another loan under this program.
- You will provide to the lender documentation that verifies 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 weeks after getting this loan.
- Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. Due to the likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

- All the information you provided in your application and all supporting documents and forms is true and accurate. Knowingly making a false statement to get a loan under this program is punishable by law.
- You acknowledge that the lender will calculate the eligible loan amount using the tax documents you submitted. You affirm that the tax documents are identical to those you submitted to the IRS. And you also understand, acknowledge, and agree that the lender can share the tax information with the SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Loan Forgiveness: The principal of the loan will be forgiven as long as (1) the loan proceeds are used to cover payroll costs², and most mortgage interest, rent, and utility costs over the eight (8) week period after the loan is made; and (2) employee and compensation levels are maintained. As general guidance, the SBA notes that it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs due to the expected high subscription. Borrowers will owe money when the loan becomes due if the loan amount is used for anything other than payroll costs, mortgage interest, rent, and utility payments over the eight (8) weeks after getting the loan. Additionally, borrowers may owe money if they do not maintain staff and payroll. Further, loan forgiveness will be reduced if the borrower decreases the staff and employee headcount or if the borrower decreases salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019. Borrowers have until June 30, 2020, to restore your full-time employment and salary levels for any changes made between February 15, 2020 – April 26, 2020.

To request forgiveness, borrowers can submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.

If you have questions about how the Paycheck Protection Program could help your small business, please call us at (479) 553-7678 or email Cameron Brewer at cameron@eldridgebrooks.com.

² Payroll costs are capped at \$100,000 on an annualized basis for each employee.