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CARES ACT – PAYCHECK PROTECTION PROGRAM

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in part, dedicates \$349 billion to prevent layoffs and business closures while workers are required to stay home during the pandemic. The Act establishes a “Paycheck Protection Program” (PPP) to provide small businesses with an incentive to keep employees on the payroll. The Program also offers debt forgiveness if certain employee retention and pay benchmarks are met.

I PPP ELIGIBILITY

A. Lenders

The Act authorizes the SBA and U.S. Department of Treasury to extend authority to make PPP Loans to additional lenders beyond those already certified to make regular SBA 7(a) loans. This means that lenders do not have to currently be certified SBA lenders to participate in the PPP. Additional lenders approved by Treasury are only permitted to make PPP loans, not regular SBA 7(a) loans. The additional lenders must have necessary qualifications to process, close, disburse and service PPP Loans.

B. Borrowers

Small businesses in existence on February 15, 2020, which paid payroll taxes on employees or paid independent contractors include:

- Businesses with 500 or fewer employees;
- Businesses within the SBA small business size threshold;
- Self-employed individuals (sole-proprietors and independent contractors) accommodation and food services businesses (NAICS Code 72) with 500 or fewer employees per location and less than 500 million in gross annual receipts in 2019;
- Any business assigned a franchise operator code by SBA; and
- Any business that receives assistance under the Small Business Investment Act.

II. APPLICATIONS/CERTIFICATIONS

An eligible recipient applying for a covered loan must provide a good faith certification. The certification must state:

- That the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
- Acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- That the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and
- During the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

III. COVERED LOAN TERMS

A. Maximum Loan Amount

The loan amount available to an eligible recipient under the program is the lesser of a) two and one-half (2.5) times the average total monthly payments by the applicant for payroll costs incurred during the one year period before the date on which the loan is made; or b) \$10 million.

B. Loan Maturity

Loan maturity shall be for a maximum of 10 years.

C. Interest Rate

Interest rate shall not exceed 4 percent.

D. Prepayment Penalties

A prepayment penalty is not allowed for any payment made on a covered loan.

E. Nonrecourse

The SBA Administrator shall have no recourse against any eligible recipient of a covered loan.

F. Collateral and Guarantee

Borrowers cannot be required to provide a personal guarantee for a covered loan, and no collateral can be required for the covered loan.

G. Covered Period

PPP loans must be made between February 15, 2020, and June 30, 2020. The deadline for applying for a PPP loan is June 30, 2020.

H. Loan Deferment /Secondary Market

PPP lenders must provide complete payment deferment relief for borrowers with PPP loans for a period of not less than 6 months and not more than 1 year. The deferment must include principal, interest, and fees, but interest accrues during the deferment period. If a PPP loan is sold on the secondary market and an investor declines to approve a deferral request, the SBA will purchase the loan so that the borrower can receive the deferral period above.

I. Payroll Costs

Payroll costs equal:

- Salary, wage, commission, or similar compensation (maximum of \$100,000);
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave (not including payments for family and sick leave for which the CARES Act tax credit is received);
- Allowance for dismissal or separation;
- Payment for healthcare benefits;
- Payment for retirement benefits; and
- Payment of payroll taxes.

It also includes compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings or similar compensation from self-employment. This is also capped at a maximum of \$100,000 per year, prorated for the covered period.

J. Allowable uses

Loan proceeds may be used for:

- Payroll costs;
- Group healthcare benefits during the covered period, including paid sick, medical or family leave, and insurance premiums;
- Employee salaries, commissions, or similar compensations;
- Payments of mortgage interest (excluding principal);
- Rent;
- Utilities; and
- Interest on any other debt obligations that were incurred prior to February 15, 2020.

K. PPP Loan Forgiveness

The following costs may be forgiven during the eight – week period after the date the loan is issued:

- payroll costs; (as defined above)
- payments on interest of any mortgage obligation incurred between February 15, 2020 and June 30, 2020 (not principal);

- rent obligations due on a lease in force prior to February 15, 2020; and
- utility payments where the utility service began prior to February 15, 2020.

1. Reduction in Workforce

The amount forgiven will be reduced proportionately by any reduction in employees retained compared to the prior year and will also be reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation

2. Exemption For Re-Hires

To encourage employers to rehire any employees who have already been laid off due to the COVID-19 pandemic, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period, if the employer eliminates the reduction in full-time equivalent employees and reduction in salary of such employees.

L. Grants

Small businesses applying for a PPP forgivable loan will be eligible for a \$10,000 Emergency Grant to be issued within three days of the application being received. Applicants must certify under threat of perjury that they believe they are eligible for the Emergency Grant. The Emergency Grant award of up to \$10,000 would be subtracted from the amount forgiven under the PPP.

M. PPP Interaction With Previous SBA Loans

The SBA administrator is authorized to purchase loans made before the date of enactment of the law and to cover payments for up to six months on behalf of the borrower. An applicant with an SBA disaster loan issued on or after January 31, 2020, has the option to refinance the loan into a PPP forgivable loan.

N. Fees and Penalties

During the covered loan period with respect to a covered loan, the SBA waives fees and penalties.

O. SBA Reimbursement for Processing PPP Loans

1. Reimbursement Amounts

SBA shall reimburse a lender authorized to make a PPP loan at a rate of:

- 5 percent for loans of not more than \$350,000;
- 3 percent for loans between \$350,000 and \$2 million; and
- 1 percent for loans over \$2 million.

The amount is based on the balance of the financing outstanding at the time of the disbursement of the PPP loan.

2. Fee Limits

An agent that assists an eligible borrower for preparing an application for a PPP loan may not collect a fee in excess of the limits established by the SBA.

3. Timing

A reimbursement shall not be made later than 5 days after the disbursement of the PPP loan.

P. Regulatory Capital

- Covered loans shall receive a zero-percent risk weight.
- Covered loans shall receive temporary relief from troubled debt restructuring (TDR) disclosures. An FDIC-insured institution that modifies a PPP loan in a TDR on or after March 13, 2020 shall not be required to comply with the FASB TDR standards until such time and under such circumstances as the appropriate federal banking agency deems appropriate.

IV. ADDITIONAL RESOURCES

Additional resources relating to the CARES Act PPP can be viewed at:

https://www.uschamber.com/sites/default/files/023595_comm_corona_virus_smallbiz_loan_final.pdf

https://www.sbc.senate.gov/public/_cache/files/9/7/97ac840c-28b7-4e49-b872-d30a995d8dae/F2CF1DD78E6D6C8C8C3BF58C6D1DDB2B.small-business-owner-s-guide-to-the-cares-act-final-.pdf

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