



## New Guidance for Paycheck Protection Program Under the CARES Act



**Oscar R. Lopez**

(602) 640-9397  
[Email](#)

As summarized in our previous [Client Alert](#), on March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) issued [interim final rules](#), which are intended to supersede any conflicting terms in the CARES Act, on the implementation of the Paycheck Protection Program (PPP) and loan forgiveness under the CARES Act.

### **General Business Considerations**

- The new rules state that PPP loans will be provided on a **first come, first served basis**, so businesses should expedite submitting the [SBA PPP Application](#) to their SBA-approved lender.
- Businesses should review their organizational documents for restrictions on incurring indebtedness, and to the extent applicable, take necessary corporate actions to obtain the required authorizations.
- Business should review current loan agreements, or other agreements, that restrict further indebtedness and obtain the necessary consents. Some lenders have announced blanket waivers of these restrictions for their customers.

### **Eligible Businesses**

- The business has 500 or fewer employees whose principal place of residence is in the U.S., or is a business that operates in certain industries and meet the applicable [SBA employee-based size standards](#).
- The business is: (i) a "[small business concern](#)" and subject to the [SBA affiliation](#) rules, except for companies in the hospitality and food service industries; (ii) a 501(c)(3) tax-exempt nonprofit; (iii) a 501(c)(19) tax-exempt veterans organization; or (iv) a Tribal business concern.
- The business was in operation as of February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099. Sole proprietorships, independent contractors, or eligible self-employed individuals that were in operation prior to February 15, 2020 are also eligible for PPP loans.
- Specific documentation is required to show eligibility. Documentation includes payroll processor records, payroll tax filings, or Form 1099 for individuals, or income and expenses such as bank records from a sole proprietorship.
- We expect the SBA to provide additional guidance in the coming days about how the affiliation rules will impact the eligibility for PPP loans of the portfolio companies of angel investors and venture capital and private equity funds.

### **Ineligible Businesses**

- Engaged in any activity that is illegal under federal, state, or local law.
- A household employer such as for nannies or housekeepers.
- An owner of 20% or more of the equity of the business is incarcerated, on probation, on parole, or presently subject to an indictment; or has been convicted of a felony with the last 5 years.
- The business, or any business owned or controlled by the business or any of its owners, has obtained a direct or guaranteed loan from the SBA or any federal agency that is currently delinquent or has been in default within the last 7 years.

[Certain other business](#) are also ineligible (excluding non-profits), including life insurance companies, foreign businesses, passive business owned by developers and landlords that do not actively occupy the assets; financial businesses, and private clubs that limit membership, among others.

### **PPP Loan Terms**

- Maximum loan amount of \$10 million.
- Business are limited to 1 loan, so they should consider applying for the maximum amount.
- Interest rate will be 100 basis points or 1%.
- The maturity will be 2 years.
- Payments will be deferred for 6 months, but interest will accrue during deferment.
- The SBA will guarantee 100% of the loan and there is no personal guarantee or collateral requirement.

### **Use of Funds**

- Interest payment on any debt obligation incurred before February 15, 2020, payroll expenses, rent or mortgage interest, utilities, or to refinance an SBA EIDL loan.

### **Forgiveness**

- The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest.
- The actual amount of loan forgiveness will depend on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan.
- No more than 25% of the loan forgiveness amount may be attributable to nonpayroll costs.

### **Calculate Your Approximate Maximum Loan Amount**

- **Step 1:** Aggregate payroll costs from the last 12 months for employees in the United States.
- **Step 2:** Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 (pro-rated) and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.
- **Step 3:** Calculate average monthly payroll costs (divide the amount from Step 2 by 12).
- **Step 4:** Multiply the average monthly payroll costs from Step 3 by 2.5.
- **Step 5:** Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL.

Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule, by email at [ppp-ifr@sba.gov](mailto:ppp-ifr@sba.gov), or at <http://www.regulations.gov>.

Osborn Maledon will continue to provide information, guidance, and resources to assist our clients in navigating this complex and challenging time.

\*Check with a financial professional for help calculating your approximate loan amount.

\*\*Disclaimer: This email is provided for informational purposes only and does not constitute, and should not be considered, legal advice. Please consult your attorney about your particular situation.



**Mackenzie C. Woods**

(602) 640-9396  
[Email](#)



**Jonathan F. Ariano**

(602) 640-9311  
[Email](#)



**William M. Hardin**

(602) 640-9322  
[Email](#)