

# Additional Treasury Guidance on Payroll Protection Program Loans

April 3, 2020 | **CLIENT ALERTS**

Last night (April 2), the [Small Business Administration \(SBA\)](#) issued an [interim final rule](#) on the Payroll Protection Program (PPP) loans created by the CARES Act passed last week. This rule is effective immediately, due to emergency rulemaking authority the CARES Act granted SBA, although SBA will still consider comments and may make revisions. While many aspects of the CARES Act remain consistent with this additional guidance, in some cases there were some additional clarifications made to sections of the CARES Act that should be highlighted.

The Payroll Protection Program loans: are available to small businesses with the same terms for every loan; will be provided on a first come, first served basis; will be 100% guaranteed by the federal government; and don't require collateral from a potential borrower. Loans will have a two-year maturity at a 1% interest rate with a six-month deferral on payment (and the loans will be forgivable, as discussed below). The application window for a Payroll Protection Program loan opens today, April 3, 2020, and the deadline for applications is June 30, 2020.

Eligible borrowers are businesses with fewer than 500 employees (or that meet certain industry-specific small business size limits), including for profit businesses, 501(c)(3) nonprofits, veterans organizations, or tribal business concerns, so long as the business was in operation on February 15, 2020.

The borrower will be eligible to borrow the following amount:

- The aggregate amount of payroll costs from the last twelve (12) months for employees whose principal place of residence is the United States; **MINUS**
- Any compensation for an individual employee, independent contractor, or sole proprietor over \$100,000;  
**DIVIDED BY**
- Twelve (12); **MULTIPLIED BY**
- 2.5; **PLUS**
- Any amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020, and April 3, 2020. EIDL loans are authorized by a separate section of the CARES Act and can be up to \$10,000 in immediate relief.

Essentially, the loan amount is two and a half months' payroll, adjusted to cap compensation at \$100,000 per annum.

Payroll costs include:

- Compensation to employees, whose principal place of residence is the United States, in the form of salary, wages, commissions, or similar compensation;
- Cash tips or the equivalent based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips;
- Payment for vacation, parental, family, medical, or sick leave;

- Allowance for separation or dismissal;
- Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; and
- Payment of state and local taxes assessed on compensation of employees.

Note that independent contractors or sole proprietors may include their wage, commissions, income, or net earnings from self-employment or similar compensation in calculating their payroll costs. Because independent contractors have the ability to apply for PPP loans on their own, they do not count as employees for purposes of their employers' payroll cost calculations.

The full amount of the loan principal and any accrued interest can be forgiven. However, a maximum of 25% of the loan amount may be used for allowed non-payroll cost purposes for the forgiveness calculation. The loan amount is permitted to be used by the borrower for the following purposes:

- Payroll costs as defined above;
- Mortgage interest payments, but not mortgage prepayments or principal payments;
- Rent;
- Utilities; and
- Interest on debt obligations outstanding before Feb. 15, 2020.

75% of the loan amount must be used for payroll costs of the borrower. Willingly misusing the proceeds of the loan may subject the borrower to penalties, including fraud.

The SBA committed to issuing additional guidance regarding the applicability of its affiliation rules to the Payroll Protection Program. The affiliation rules guide when and how businesses are counted together for purposes of determining whether they qualify as small.

We would be happy to assist with any questions or problems that may arise in the application process, including your eligibility under the Payroll Protection Program, and what to expect as a borrower under the program. Please contact the attorney with whom you work or any of the attorneys listed below.

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