

Update: Interim Final Rule Issued for Paycheck Protection Program

On April 2, 2020, the Small Business Administration (the **SBA**) published an Interim Final Rule regarding the Paycheck Protection Program (**PPP Loan**), enacted as part of the Coronavirus Aid, Relief, and Economic Security Act (**CARES Act**). Below are critical points that the SBA has clarified in the published guidance. The Interim Final Rule can be found [here](#).

What is the interest rate of the loan?

The SBA has advised that the interest rate of the loan has been increased from a 0.5% fixed rate to a 1% fixed rate.

Do independent contractors count as employees for purposes of PPP Loan calculations or PPP Loan forgiveness?

No. Independent contractors have the ability to apply for their own PPP Loans, so they do not count for purposes of a borrower's PPP Loan calculations or forgiveness.

How can PPP Loan proceeds be used?

The proceeds of a PPP loan are to be used for:

- i. payroll costs (as defined in the Act and in 2.f);
- ii. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- iii. mortgage interest payments (but not mortgage prepayments or principal payments);
- iv. rent payments;
- v. utility payments;
- vi. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
- vii. refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP Loan. **If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP Loan. If your EIDL loan was used for payroll costs, your PPP Loan must be used to refinance your EIDL loan.** Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP Loan. **However, at least 75% of the PPP Loan proceeds shall be used for payroll costs.** For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included. For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness.

How much of the loan is forgiven?

While the full principal amount of the loan and any accrued interest may be forgiven, **not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs.** The SBA has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the CARES Act and ensure finite program resources are devoted primarily to payroll.

Has the PPP Loan application been updated?

Yes. An applicant must submit SBA Form 2483 (Paycheck Protection Program Application Form), which can be accessed [here](#).

What certifications need to be made on the PPP Loan application?

An authorized representative of the applicant must certify in good faith to all of the below:

APRIL 3, 2020

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- i. **The applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.**
- ii. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.
- iii. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable such as for charges or fraud. **As explained above, not more than 25% of loan proceeds may be used for non-payroll costs.**
- iv. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan will be provided to the lender.
- v. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. As explained above, not more than 25% of the forgiven amount may be for non-payroll costs.
- vi. During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.
- vii. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than 30 years and/or a fine of not more than \$1,000,000.
- viii. I acknowledge that the lender will confirm the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service. I also understand, acknowledge, and agree that the Lender can share the tax information with 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.

PPP Loans are being offered on a first-come, first-served basis. Applications for small businesses and sole proprietorships are being accepted beginning April 3, 2020, and independent contractors and self-employed individuals can begin submitting applications on Friday, April 10, 2020.

For more information on the PPP Loan or for assistance in applying for the program, please contact Babst Calland Attorneys Moore Capito at 304.552.8986 or mcapito@babstcalland.com, Christian Farmakis at 412.394.5642 or cfarmakis@babstcalland.com or Andrew Terranova at 412.773.8717 or aterranova@babstcalland.com.

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