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# DISCLOSURE

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## CARES Act – Paycheck Protection Program FAQ\*

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On Friday, March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act, the CARES Act, was signed into law. The CARES Act is a \$2.2 trillion emergency relief package to help Americans and various economic actors impacted by the novel coronavirus, COVID-19, pandemic. The entire CARES Act can be found [here](#). There are many aspects to the CARES Act, but one prominent feature that most small businesses need to understand is the Paycheck Protection Program, or PPP. The PPP program dedicates \$349 billion dollars for new loans to small businesses. High level details are outlined below.

**What is the Paycheck Protection Program?** PPP is the result of an amendment to the Small Business Act, allowing the Small Business Administration, SBA, to provide loans completely backed by the federal government to eligible businesses. Loan proceeds can be used for operational costs like payroll, rent, health benefits, insurance premiums, and utilities, among other identified items. The PPP loans have many favorable features that are not typically available, including a forgivable component up to the entire principal amount borrowed, subject to certain and detailed conditions.

**Who is eligible?** Most small businesses with less than 500 employees will be eligible, as well as certain larger businesses in the hospitality and dining industries. Additionally, a business must do the following to complete an application:

- Demonstrate it was in operation as of February 15, 2020;
- Demonstrate that it had employees for whom it paid salaries and payroll taxes or paid independent contractors; and
- Submit a good-faith certification that:
  - the loan is necessary to support ongoing operations



due to the uncertainty of current economic conditions;

- the funds will be used for a qualified purpose under the PPP; and
- the applicant is not making duplicative requests for funding on the PPP or receiving funding under a different program.

**Who can provide funding?** The PPP loans will be processed by banks that are existing authorized SBA lenders. There are many in the greater Tampa Bay region. The SBA may authorize additional lenders to administer PPP.

**How much can be borrowed?** The amount a business can borrow is based on a formula related to the business's payroll. Generally, the applicant will be eligible for 2.5 times the monthly running average of the last twelve months payroll, including bonuses, but excluding any portions of employee salary in excess of \$100,000 (along with a few other exclusions). For example, if your qualified T-12 payroll expense was \$200,000 per month, you could borrow \$500,000. The maximum amount of the loan is \$10 million.

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**What can the loan help me pay?** Until June 30, 2020, the PPP loan proceeds may be used for any of the following qualified purposes:

- payroll costs, including employee salaries, commissions, or similar compensations (excluding any portions of employee salary in excess of \$100,000);
- costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- payments of interest on any mortgage obligation (not to include any prepayment of or payment of principal on a mortgage obligation);
- rent (including rent under a lease agreement);
- utilities; and
- interest on any other debt obligations that were incurred before February 15, 2020.

**Will a reduction of employees or reduction of employee wages prohibit me from participating in the PPP?** No; nothing in the Act prohibits a reduction of employees or their wages. It will, however, impact the amount of the PPP loan eligible for forgiveness. Examples of the forgiveness calculations are referenced below and there is an exemption for re-hires made before June 30, 2020. However, precise calculations will be difficult until the SBA issues guidance and regulations implementing the forgiveness section; the SBA has 30 days to do so.

**When is the loan paid and how much of the loan can be forgiven?** Initially, PPP loan recipients are presumed to qualify for complete payment deferment relief (for principal, interest, and fees) for six months to one year. PPP loans can be forgiven to the extent that the loan proceeds have been used for qualified purposes, up to the entire principal amount of the loan. However, the amount forgiven is reduced by two factors, employee retention and employee wage maintenance. First, the maximum amount of forgiveness (presumed to be 100%) will be multiplied by the ratio of the average number of full-time equivalent employees maintained through June 30, 2020 over either (i) the period from either February 15, 2019 through June 30, 2019 or (ii) the period beginning on January 1, 2020 and ending on February 29, 2020. The amount forgiven is also reduced to the extent that compensation for any individual making less than \$100,000 per year is reduced by more than 25%. The forgiveness formulas have additional nuances and further or clarifying guidance is expected by the SBA. The PPP loan recipient will need to provide certified documentation for the forgiveness calculations. Importantly, any debt forgiven will not constitute cancellation of indebtedness income for federal tax purposes.

**What about any portions of the loan that are not forgiven?** Any aspect of the loan that is not forgiven will convert to a 10-year term with an interest rate not to exceed 4%. There will be no prepayment penalties.

**What other features are there?** Many of the traditional aspects of SBA loans are waived, both in eligibility and loan terms. Most importantly, the PPP loans require no collateral and no personal guarantee. Further, the PPP loans will be non-recourse against the owners of the business, so long as the loan is used for authorized purposes. Unlike other SBA loans, applicants are not required to show that credit is unavailable elsewhere or demonstrate repayment ability.

**What are the next steps?** Our firm and its partners have decades of banking experience in both the legal and operational aspects. Based on that collective experience and through our contacts in the banking industry below are a few action items for business owners:

- If you have an existing relationship with a bank, contact them immediately to see if they are an SBA lender.
- Reach out to your trusted advisers – your attorneys, accountants and others you rely on for accurate information of important issues.
- Gather the materials related to eligibility and necessary for the calculation of the PPP loan amount so that once final guidance is issued, you are ready to apply.

Given the massive unprecedented nature of the CARES Act and the PPP, it will take time for the PPP loans to be available. Expectations are that PPP loans will not be available for disbursement for several weeks. The SBA has various deadlines to provide additional regulations that will address practical problems that arise and impact the interpretations of the provisions of PPP. Your team at Johnson Pope is ready to answer any questions that may arise. Please contact either your regular attorney at the firm, [Will Conroy \(WillC@jpfirm.com\)](mailto:WillC@jpfirm.com) or (727) 800-5980) or [Patrick Traber \(PatrickT@jpfirm.com\)](mailto:PatrickT@jpfirm.com) or (813) 501-3871).

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