大成 DENTONS

Dentons Quick Guide
to Paycheck Protection Program Loans

As of April 6, 2020

1 Eligibility

Generally, companies that employ 500 employees or less are eligible for a Paycheck Protection Loan (PPP) under the CARES Act and related laws and regulations. In addition, companies engaged in business in certain industry sectors may have a higher maximum employee threshold[1]. Self-employed individuals, independent contractors and sole proprietorships are also eligible. Based on the rules, certain affiliated companies need to aggregate their employee count. There are exceptions to the existing affiliation rules for (a) accommodations and food services business concerns with no more than 500 employees, (b) franchises, and (c) business concerns that receive funding from small business investment companies.

2 Loan Amount

The maximum PPP loan amount per borrower is equal to the lesser of (a) $10 million or (b) 2.5 times the average monthly payroll costs, plus the value of any existing EIDL loan received after January 31, 2020—i.e., PPP loans can be used to repay or refinance certain existing EIDL loans. Please note, there is some ambiguity as to how to calculate average monthly payroll costs. The statute and the regulations refer to payroll costs over the last 12 months; however, the application instructions indicate that most applicants will use their 2019 payroll information. It would be reasonable to use either measuring period, but the measuring period used should be clearly disclosed to the lender. If the applicant was not in business between February 15, 2019 and June 30, 2019, January and February 2020 is the reference time period for average total monthly payroll costs.

- Payroll costs include payments with respect to employees that are classified as salary, wage, commission, or similar compensation; cash tips or equivalent, payment for vacation, parental, family, medical or sick leave; allowance for dismissal or separation; group health care benefits, including insurance premiums; payment of retirement benefits; and state or local tax assessments on employee compensation.
- For sole proprietors and independent contractors determining payroll costs, payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation is also included.
- Note that (a) income in excess of $100,000 per employee annually and (b) compensation of employees located outside the U.S. are excluded, as are taxes imposed or withheld under US federal tax law during the "covered period" (February 15, 2020 through June 30, 2020).

1 See chart here: https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=13%3A1.0.1.1.17#se13.1.121_1201

3 Use of Proceeds

PPP proceeds can be used for (a) payroll, (b) group health care benefits, (c) employee salaries, commissions or similar compensation, (d) interest payments on mortgages or other debt obligations, (e) rent or (f) utilities.

4 Waivers and Deferrals

The CARES Act waives any requirement of a personal guarantee or collateral for PPPs. In addition, the requirement that an applicant be unable to obtain credit elsewhere is waived and the SBA will collect no fees from applicants. Any payments of interest and/or principal are deferred for 6 months. PPPs will not have any prepayment penalties.

5 Loan Forgiveness

Once a PPP is originated and funded, the borrower will be eligible for loan forgiveness on a tax-free basis if certain conditions are met.

- If, during the 8-week period after the PPP is originated and funded, the borrower incurs expenses for payroll costs, mortgage interest, rent and utilities equal to or greater than the balance of the PPP, then 100% of the PPP will be forgiven tax-free.
- PPP borrowers can lose eligibility for some portion of loan forgiveness as follows:
    1. If the borrower does not maintain the same average number of employees per month during the 8-week period after a PPP is originated as it had previously maintained during either (a) the period from February 15 through June 30, 2019 or (b) the period from January through February 2020, loan forgiveness will be reduced proportionately. For example, if a borrower had an average of 95 FTE employees during the 8-week covered period and an average of 100 FTE employees during the applicable reference period, then the recipient would only be entitled to 95% of the loan forgiveness that would otherwise be available; and
    2. If the borrower reduces the total salary or wages of any employee during the covered period by an amount that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed (taking into account only employees who did not receive, during any single pay period in 2019, wages or salary at an annualized rate of pay in an amount more than $100,000), then any such reduction in excess of 25% would reduce the amount of the loan eligible for forgiveness.
- Even if you have laid off employees or reduced wages, or do so during the 8 week period following origination of the PPP, you generally still can have the entirety of the PPP forgiven, if you return to your previous employment and/or salary levels by June 30, 2020. Detailed rules apply.

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