

THE COUNCIL'S COVID-19 WEBINAR SERIES

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# **SMALL BUSINESS ADMINISTRATION'S PAYCHECK PROTECTION LOAN PROGRAM**

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# BENEFITS OF PAYCHECK PROTECTION LOANS

AVAILABLE APRIL 3 FOR SMALL BUSINESSES AND SOLE PROPRIETORS & APRIL 10 FOR INDEPENDENT CONTRACTORS AND SELF-EMPLOYED INDIVIDUALS

## 100% GUARANTEED

The loans are 100% federally guaranteed. No collateral, personal guarantees, or fees.

## \$10 MILLION LOAN CAP

Loan amounts up to \$10 million per eligible entity.

## 2-YEAR MATURITY

No penalty for prepayment.

## LOAN FORGIVENESS

Full loan forgiveness for employers that maintain or restore pre-crisis payroll.

## DEFERMENT RELIEF

Loan payments are automatically deferred for 6 months, but interest will accrue during the deferral period.

## 1% INTEREST RATE

The interest rate will be fixed at 1%.

## NO RECOURSE

No recourse against individuals, shareholders, members, or partners of loan recipients for non-payment, unless loan dollars are used for impermissible purposes.

# ELIGIBILITY FOR PAYCHECK PROTECTION LOANS

ENTITIES—INCLUDING SOLE PROPRIETORS, INDEPENDENT CONTRACTORS, AND SELF-EMPLOYED INDIVIDUALS—THAT WERE OPERATING AND PAYING WORKERS ON FEBRUARY 15, 2020 ARE ELIGIBLE, PROVIDED THEY ARE EITHER—

## SMALL BUSINESS CONCERNS

“Small business concerns” as defined in existing SBA laws and rules (based on employee count OR revenue for the industry); or

Tangible net worth of the business \$15M or less and average net income after federal income taxes for last two fiscal years is \$5M or less

OR

## OTHER ELIGIBLE RECIPIENTS

For-profit “business concerns,” 501(c)(3) non-profits, 501(c)(19) veterans organizations, and Tribal businesses with not more than the greater of—

- 500 employees; or
- The SBA’s “small” size standard in number of employees for the entity’s industry.

DEPENDING ON YOUR INDUSTRY, YOUR BUSINESS MAY STILL QUALIFY IF YOU HAVE MORE THAN 500 EMPLOYEES.

# INELIGIBLE ENTITIES

**EXCEPT 501(C)(3) NON-PROFITS & FAITH-BASED ORGANIZATIONS, BUSINESSES THAT NORMALLY ARE EXCLUDED FROM SBA BUSINESS LOANS ARE INELIGIBLE FOR PPLs. EXAMPLES INCLUDE —**

- ✘ Household employers of nannies, housekeepers, etc. (not a normal SBA exclusion, but excluded under PPL rules).
- ✘ Financial businesses primarily engaged in the business of lending.
- ✘ Passive businesses owned by developers/landlords that do not actively use or occupy the assets acquired or improved by the loan proceeds.
- ✘ Life insurance companies.
- ✘ Businesses located in a foreign country.
- ✘ Private membership clubs and businesses.
- ✘ Businesses deriving more than 1/3 of gross annual revenue from legal gambling activities.
- ✘ Businesses primarily engaged in political or lobbying activities.

# DETERMINING EMPLOYER SIZE

## GENERAL RULES

- Count full-time, part-time, and “other basis” employees of the applicant and of all U.S. and foreign affiliates of the applicant, unless an affiliation rule waiver applies (then count employees of the applicant only).
- 4 affiliation tests apply for PPLs (to show “control or power to control”):
  - Over 50% equity ownership
  - Common management by CEO, Board, or similar
  - Identity of interest between close relatives
  - Stock options, convertible securities, and agreements to merge (given present effect as if rights exercised)
- Employee count is average per pay period in the last 12 months or over the period you use to calculate your average payroll costs

## SPECIAL COUNTING RULES & AFFILIATION WAIVERS FOR SOME BUSINESSES

Business concerns with NAICS codes starting with 72 (accommodations or food service - use “primary industry” code) are eligible if they have 500 or fewer employees per location.

SBA affiliation rules waived for any “business concern” (i.e., separately organized for-profit entity):

- With a **72 NAICS code**;
- Operating as a franchise under an **SBA franchise identifier code**; or
- Receiving financial assistance from Small Business Investment Act licensees.

Affiliation rules also waived for faith-based organizations.

# THE APPLICATION PROCESS

**MUST FILE THE STANDARD, STREAMLINED PAYCHECK PROTECTION LOAN APPLICATION (SBA FORM 2483). IT GENERALLY REQUIRES—**

- ✓ Basic business identification information;
- ✓ A list of all owners of the applicant with 20% or greater ownership stake;
- ✓ A list of any businesses under common ownership or management with the applicant;
- ✓ Details on any EIDLs received by the business between January 1, 2020 and April 3, 2020;
- ✓ Information about individual applicants' and 20%-plus owners' criminal history; **and**
- ✓ Good faith certifications by a business representative.

**APPLICANTS MUST ALSO SUBMIT PAYROLL DOCUMENTATION TO ESTABLISH THEIR LOAN AMOUNT. CHECK WITH YOUR LENDER ABOUT ACCEPTABLE DOCUMENTATION.**

# MORE ON THE APPLICATION PROCESS

## GOOD-FAITH CERTIFICATIONS INCLUDE, AMONG OTHER THINGS —

- ✓ The applicant was in operation on February 15, 2020 and paid workers at that time, and is otherwise eligible for a PPL.
- ✓ The loan is needed to "support ongoing operations" during the COVID-19 emergency.
- ✓ Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments.
- ✓ The borrower will provide documentation necessary to show full-time equivalent employees and how loan dollars were spent during the 8 weeks following loan origination to establish the forgiveness amount.
- ✓ Loan forgiveness will be for the sum of documented payroll costs, covered rent and mortgage payments, and covered utilities, but "not more than 25% of the forgiven amount may be for non-payroll costs."
- ✓ The applicant has not and will not receive another PPL from now until December 31, 2020.
- ✓ All the information provided by the borrower is true and accurate (intentional misrepresentations trigger civil and criminal liability).
- ✓ The lender will calculate the eligible loan amount using the tax documents submitted.

**VERIFYING CERTIFICATIONS AND DOCUMENTATION GENERALLY SATISFIES BANKS' UNDERWRITING OBLIGATIONS FOR PPLs. LENDERS MAY RELY ON BORROWER CLAIMS FOR ELIGIBILITY AND LOAN AMOUNTS. E-SIGNATURES AND E-CONSENTS ARE PERMITTED.**

# MAXIMUM LOAN AMOUNT

LOANS ARE CAPPED AT THE LESSER OF—

**\$10 MILLION**

**OR**

**250% OF AVERAGE MONTHLY  
"PAYROLL COSTS" DURING THE  
LAST 12 MONTHS OR 2019**

**(OR ALTERNATIVE LOOK-BACK  
PERIODS FOR NEW AND  
SEASONAL BUSINESSES)**

Plus any outstanding EIDL amounts to be refinanced,  
less any advances taken under a COVID-19 EIDL loan



# ALLOWABLE USES FOR LOAN DOLLARS

AT LEAST 75% OF PPL PROCEEDS MUST BE SPENT ON PAYROLL COSTS

## GROUP HEALTH CARE BENEFITS

Group health care benefits during periods of paid sick, medical, or family leave.

## MORTGAGE INTEREST

Payments of interest on mortgage obligations.

## INSURANCE PREMIUMS

Any insurance premiums.

## PAYROLL COSTS

Includes employee compensation (e.g., salary, wages, commissions, cash tips, etc.) up to annualized compensation of \$100,000; paid leave; severance payments; payment for group health benefits, including insurance premiums; retirement benefits; and state and local payroll taxes.

**\*\*Independent contractors and sole proprietors do not count as employees for payroll cost calculation because they may apply for their own loans under the program.**

Excludes excess employee compensation above the \$100,000 threshold; taxes paid by the employer that are not state/local payroll taxes; compensation to non-U.S. employees; and sick/family leave wages for which credit is allowed under the Families First Coronavirus Relief Act.

**SAME "PAYROLL COST" DEFINITION APPLIES FOR LOAN AMOUNT, ALLOWABLE USES, & FORGIVENESS DETERMINATION.**

## EXISTING SBA USES

Any uses already permitted for SBA Business Loans (e.g., inventory, supplies, building or land purchases, construction, site improvements, etc.).

## INTEREST ON OTHER DEBT OBLIGATIONS

Interest on any other debt obligations incurred before February 15, 2020.

## RENT & UTILITIES

Rent (any rent under a lease agreement) and utilities.

## ECONOMIC INJURY DISASTER LOAN (EIDL)

### REFINANCING

Refinancing of an SBA Economic Injury Disaster Loan (EIDL) made between January 1, 2020 and April 3, 2020.

# MAXIMUM LOAN FORGIVENESS AMOUNT

**THE MAXIMUM AVAILABLE FORGIVENESS AMOUNT (UP TO PRINCIPAL AMOUNT OF THE LOAN) IS THE SUM OF THE FOLLOWING INCURRED AND PAID WITHIN 8 WEEKS OF YOUR LOAN ORIGINATION –**

- Payroll costs;
- Interest on mortgage obligations in place before February 15, 2020;
- Rent obligations under leases in place before February 15, 2020; and
- Utility payments for certain services that began before February 15, 2020.

**THE FORGIVENESS PROVISIONS INCENTIVIZE QUICK DEPLOYMENT OF LOAN DOLLARS TO THESE PRIORITY BUCKETS OF EXPENSES, PARTICULARLY PAYROLL.**

- Not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs; and
- Any dollars spent more than 8 weeks after your loan is originated, even for these forgiveness-eligible expenses, will not be included in your forgiveness amount.

# MORE ON LOAN FORGIVENESS

## REDUCTIONS IN FORGIVENESS AMOUNTS

Maximum forgiveness amounts will be reduced:

- Proportionately for reductions in average full-time equivalent employees (FTEEs) between pre-crisis levels (Feb 15, 2019 – June 30, 2019 or Jan. 1, 2020 – Feb. 29, 2020) and the 8-week forgiveness period;
- By amounts of any reductions in total salary or wages over 25% (compared to the prior completed quarter of employment) for any employee making less than \$100,000 annually; and
- For any advances taken on SBA economic injury disaster loans (EIDLs).

## RELIEF FROM REDUCTIONS FOR PAYROLL ADJUSTMENTS MADE BY JUNE 30

The above reduction rules will not apply if the employer eliminates by June 30, 2020:

- Reductions (compared to February 15, 2020) in the number of FTEES made between February 15, 2020 and April 26, 2020; and/or, as applicable,
- Salary reductions (compared to February 15, 2020) made between February 15, 2020 and April 26, 2020 for 1 or more employees.

## LONGER-TERM PAYROLL OBLIGATIONS FOR PPL FORGIVENESS?

There are no longer-term payroll maintenance requirements in the CARES Act to receive forgiveness amounts, but we are awaiting further guidance from SBA.

# APPLYING FOR LOAN FORGIVENESS

## TO RECEIVE LOAN FORGIVENESS, BORROWERS MUST APPLY WITH DOCUMENTATION —

Verifying full-time equivalent employees on payroll and their pay rates (via IRS payroll tax filings and state income, payroll, and unemployment filings);

On covered costs/payments (e.g., canceled checks, receipts, or other documents verifying mortgage, rent, and utility payments); and

Certifying (by an authorized business representative) that the documentation is true and correct and that forgiveness amounts requested were used to retain employees and make other forgiveness-eligible payments.

**FOR LOAN BALANCES REMAINING AFTER FORGIVENESS, THE CARES ACT CALLS FOR THE SAME LOAN TERMS TO APPLY. WE EXPECT SBA RULES ON THE FORGIVENESS PROCESS, WHICH COULD INCLUDE POST-FORGIVENESS PENALTIES FOR NON-COMPLIANCE WITH PROGRAM PARAMETERS.**

# INTERACTION WITH CARES ACT TAX BENEFITS

## NO EMPLOYEE RETENTION CREDIT FOR PPL RECIPIENTS

- Credit provides eligible employers a refundable credit against payroll tax (Social Security and Railroad Retirement) liability equal to 50% of the first \$10,000 in wages per employee (including value of health plan benefits). Eligible employers must have done business in 2020 and be experiencing either:
  - At least a partial suspension of operations due to government orders (e.g., limiting commerce, travel, group meetings, etc.); or
  - A year-over-year reduction in gross receipts of at least 50%.
- For employers with more than 100 full-time employees, only employees who are currently not providing services for the employer due to COVID-19 causes are eligible for the credit.

## NO EMPLOYMENT TAX DEFERRAL FOR RECIPIENTS OF PPL FORGIVENESS

- Postpones the due date for depositing employer payroll taxes and certain self-employment taxes attributable to wages paid during 2020. The deferred taxes are payable over the next two years—half due December 31, 2021 and half due December 31, 2022.

**BUSINESSES WILL HAVE TO COMPARE THE BENEFITS OF PPLs AND THESE TAX CREDITS/DEFERRALS TO DETERMINE WHICH PATH PROVIDES THE GREATER FINANCIAL BENEFIT (E.G., COMPARE IMMEDIATE LIQUIDITY NEEDS WITH LONGER-TERM TIME VALUE OF MONEY CALCULATIONS).**

# WHERE WE ARE & WHAT'S NEXT

## APRIL 2, 2020

SBA began issuing rules to implement the Paycheck Protection Loan Program.

We expect continuous updates to FAQ guidance.

Applicants may rely on rules/guidance in place at the time of application and need not act on subsequent SBA announcements (but you may update applications that are not yet processed).



## APRIL 3, 2020

Loans available for small businesses and sole proprietorships.



## APRIL 10, 2020

Loans available for independent contractors and self-employed individuals.



## APRIL 26, 2020

SBA has until April 26, 2020 to issue specific guidance on loan payment deferment relief and loan forgiveness provisions.



# MAIN STREET LENDING FACILITY

## BORROWER ELIGIBILITY

Borrower must be a business that is created or organized in the U.S. or under the laws of the U.S. with significant operations in and a majority of its employees based in the U.S. and:

- Have 10,000 or fewer employees; or
- 2019 annual revenue of \$2.5 billion or less

Expect further guidance on counting rules

## BASIC LOAN TERMS

- Available for new loans or to expand existing loans
- 4-year loan maturity
- No penalty for prepayment
- Adjustable rate of SOFR + 250-400 basis points
- Amortization of principal and interest deferred for one year
- **MAY have a PPL and a Main Street Loan**
- May not get a new loan and expand an existing loan
- Borrowers may not participate in Primary Market Corporate Credit Facility

## LOAN AMOUNTS

Minimum loan size = \$1 million

Maximum loan size for new loans = lesser of:

- \$25 million, or
- amount that, when added to the borrower's existing outstanding and committed undrawn debt, does not exceed four times the borrower's 2019 EBITDA

Maximum loan size for expanded loans = lesser of:

- \$150 million
- 30% of the borrower's existing outstanding and committed but undrawn bank debt, or
- amount that, when added to the borrower's existing outstanding and committed undrawn debt, does not exceed six times the borrower's 2019 EBITDA.

## BORROWER ATTESTATIONS

- May not repay other debts (except mandatory principal payments) until this loan is repaid
- Will not seek to cancel or reduce lines of credit with any lender
- Loan is needed due to COVID-19
- Will make reasonable efforts to maintain payroll/employees during term of the loan
- Restrictions on executive compensation for 1 year beyond loan term
- No stock buy-backs or dividend payments for 1 year beyond loan term
- Entity is not held or controlled by POTUS, VP, Agency Head, or Member of Congress

# EVEN MORE FUNDING OPTIONS TO CONSIDER

## Treasury Department Direct Loan Programs

### COMMON DIRECT LOAN PROGRAM RESTRICTIONS

- No stock buybacks or dividend payments.
- Retention of 90% of workforce (at full compensation and benefits) until September 30, 2020.
- Executive compensation restrictions for the term of the loan plus one year:
  - Employees > \$425,000 in 2019 cannot receive a raise, nor can severance be more than double maximum compensation.
  - Executives > \$3 million in 2019 cannot make more than \$3 million + ½ of the amount over \$3 million in 2020.

### TREASURY DIRECT LOAN PROGRAMS FOR MID-SIZED BUSINESSES (500-10,000 EMPLOYEES), AIR CARRIERS, BUSINESSES CRITICAL TO NATIONAL SECURITY, ET AL.

Generally for businesses created or organized in the U.S. that have significant operations and a majority of employees based in the U.S.





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