

SBA Paycheck Protection Program (“PPP”) Alert

Yesterday, the Small Business Administration published an Interim Final Rule, effective immediately, to modify its recently-established PPP under the 7(a) Loan Program and to provide certain implementation guidelines. Highlights include:

- 1) The SBA raised the fixed interest rate on the loans from 0.5% to 1.0%.
- 2) Loans made by lenders under the program will be fully guaranteed as to both principal and interest by the SBA.
- 3) The loans will have a final maturity of two years, and no collateral or personal guarantees will be required.
- 4) The maximum loan amount to any one small business (generally, less than 500 employees) borrower is the lesser of \$10 million or 2.5 times average monthly payroll costs for the prior year (excluding any employees with annualized compensation in excess of \$100,000).
- 5) The loans will be prepayable by the borrower at any time with no penalty, and loan payments will be deferred for 6 months (interest will accrue during the 6-month deferral period).
- 6) Up to the entire amount of a PPP loan can be forgiven if 75% or more of the loan proceeds are used to maintain staff levels and cover payroll costs in the 8-week period after the loan is made and 25% or less of the proceeds are expended for allowable non-payroll operating expenses (mortgage interest, interest payments on any other debt obligations incurred before February 15, rent and utility costs) in the 8-week period after the loan is made. Loan forgiveness will be reduced proportionately for decreases in employee head count and for decreases in salaries and wages by more than 25% for any employee that made less than \$100,000 on an annualized basis in 2019. Employees have until June 30, 2020 to restore full-time employment and salary levels for any reductions made between February 15, 2020 and April 26, 2020.
- 7) The forgiven portion of a PPP loan will be repurchased from the lender by the SBA. A lender may request that the SBA purchase the expected forgiveness amount of a PPP loan at the end of week seven after disbursement by the lender. SBA will issue additional guidance on loan forgiveness shortly.
- 8) Not expending the loan proceeds or meeting the above criteria will result in a non-forgivable balance, which will be converted to an installment loan at 1% that will be retained on the lender’s books, with the initial payment deferred for 6 months, and interest accruing over the full term of the loan. Such installment loans can be prepaid by the borrower at any time with no penalty.
- 9) All SBA 7(a) lenders are automatically approved to make PPP loans on a delegated basis. The Act provides that the authority to make PPP loans can

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be extended to additional lenders determined by the Administrator and the Secretary to have the necessary qualifications to process, close, disburse, and service loans made with the SBA guarantee.

- 10) Each lender's underwriting obligation under the PPP is limited to the items listed in a-d, below, and a review of the borrower's SBA Form 2483, the "Paycheck Protection Application Form." Borrowers must submit such documentation as is necessary to establish eligibility, such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. For borrowers that do not have such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.
 - a. Confirm receipt of borrower certifications contained in Paycheck Protection Program Application form issued by the Administration;
 - b. Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on February 15, 2020;
 - c. Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application; and
 - d. Follow applicable BSA requirements
- 11) SBA will pay lenders fees for processing PPP loans in the following amounts: Five (5) percent for loans of not more than \$350,000; Three (3) percent for loans of more than \$350,000 and less than \$2,000,000; and
- 12) Fee waivers: there will be no up-front guarantee fee payable to SBA by the Borrower; there will be no lender's annual service fee ("on-going guaranty fee") payable to SBA; there will be no subsidy recoupment fee; and there will be no fee payable to SBA for any guarantee sold into the secondary market.
- 13) PPP loans may be sold in the secondary market at a premium or discount to par value.
- 14) Lenders are required to submit SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically.
- 15) PPP loans may be initiated anytime between April 3, 2020 and June 30, 2020.

We will keep you apprised of further details or clarifications with respect to the PPP as they become available.

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