




COVID-19

UPDATE:
April 1, 2020

**Coronavirus / COVID-19
Response Team**


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**The CARES Act by the
Numbers - Part 2 - What We
Know Now**

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CARES Act – By the Numbers (Part 2)

Today's Numbers

- **4/1:** Contact Your Bank Day (Not April Fools' Day)
- **4/3:** Treasury and SBA aim to have Paycheck Protection Program (PPP) up and running through banks/credit unions by April 3
- **2yr/0.50%:** All PPP loans will have a two year term and 0.50% annual interest rate
- **25%:** "Anticipated" that not more than 25% of forgiven PPP loan amount may be for non-payroll costs
- **\$100,000:** Clarity that amounts below \$100,000 still count toward "payroll costs," but ambiguity about calculation
- **3+:** New representations/certifications
- **2019:** Sample application states that many applicants will calculate payroll costs based on calendar year 2019

Paycheck Protection Program (PPP): Summary of Key Provisions

- Temporary form of Section 7(a) SBA loan
- Size of loans to equal 250% of employer's average monthly payroll costs
 - Maximum loan size is \$10 million
- Personal guarantees and collateral are not required
- No "credit elsewhere" testing
- No principal, interest or fee payments for six months
- No fee to apply or process; no pre-payment penalties
- May be used to refinance recent SBA EIDLs (disaster loans)

PPP: April 1

- Not April Fools' Day for small businesses
- **Contact Your Bank Day**
 - Ensure they are already an approved SBA Section 7(a) lender or otherwise eligible to process loan applications immediately on April 3
 - Confirm when they will begin accepting applications
 - Verify what specific information they will need
 - Treasury to SBA lenders: *"You will need to verify the dollar amount of average monthly payroll costs."*

PPP: April 3 Target

- On March 31, Treasury and the Small Business Administration (SBA) announced aim to have banks processing PPP applications up and funding by **April 3** for small businesses and sole proprietorships
 - *“Speed is the operative word.”*
 - Goal is to have banks and credit unions as “single point of contact” for PPP borrowers
- **April 10** target date for independent contractors and self-employed individuals

PPP: April 3 Target (cont.)

- FAQ from Treasury/SBA materials:
 - *“How long will this program last? Although the program is open until June 30, 2020, we encourage you to apply **as quickly as you can because there is a funding cap** and lenders need time to process your loan.”*
- Unclear how this will impact independent contractors and self-employed, who may not submit applications until April 10

PPP Loans: Identical Terms

- All PPP loans, as it turns out, will have identical terms:
 - Two year term
 - Interest rate = 0.50% (fixed)
 - First payment deferred for six months
 - Still no collateral or guarantees
 - Still no fees (processing or pre-payment)
 - Only variable will be size of the loan

PPP: 25% Cap on Non-Payroll?

- “[D]ue to likely high subscription, at least 75% of the forgiven amount must have been used for payroll.”
 - This is a new potential limitation compared to the language in the CARES Act
 - May need to re-run your math if you already had a plan to maximize forgiveness under a PPP loan using mortgage, rent and utility payments

\$100,000: Annualized Cap per Employee

- Treasury guidance is helpful in clarifying that annualized amounts below \$100,000 still count toward permissible “payroll costs”
- However, the borrower fact sheet contains seemingly contradictory information about whether the \$100,000 cap only applies to “salary, wages, commissions and tips” or all components of “payroll costs”
 - CARES Act language specifically references “salary” being capped at \$100,000, but does not reference any other components of payroll costs

3+ New Representations / Certifications

- The sample application form provided by the SBA includes some new representations and certifications, including:
 - “To the extent feasible, I will purchase only American-made equipment and products.”
 - “All SBA loan proceeds will be used only for business related purposes as specified in the loan application.”
 - “Due to likely high subscription, it is anticipated that not more than twenty-five percent (25%) of the forgiven amount may be for non-payroll costs.”
- Also, certifications must also be made by 20%+ owners, which is a new requirement and names must be disclosed
 - They must complete, sign and date certain portions of the form

2019 Payroll Costs

- The materials released by the Treasury on March 31, 2020 state that many applicants will calculate “payroll costs” based on calendar year 2019 data
 - While this may be easier from an administrative perspective for some applicants, it is inconsistent with the CARES Act language regarding a 12-month look back from the date of the loan

PPP: Other New Considerations

- Sample application requires detailed listing and description of all “affiliates” (very broad concept)
 - Will need detailed information on all other investments and management positions from all owners to determine
 - Confidentiality obligations to investors?
- Application states that any applicant that is presently involved in any bankruptcy will be rejected
 - Also applies if any owner is involved in a bankruptcy
- Application states that it will be rejected if:
 - The applicant, any owner or any other business owned or controlled by the application or any owner defaulted (or is currently delinquent) on an SBA-backed loan (or other government-backed loan) in the last seven years

PPP: Other New Considerations (cont.)

- Must disclose any recent SBA disaster loans (EIDLs)
 - But no new guidance on use of both EIDL and PPP loans together
- Application will be rejected if any 20%+ owner:
 - Is currently subject to criminal proceedings, incarcerated, or on probation or parole
 - Has been convicted or pleaded guilty to (or incurred similar sanction for) a felony or a misdemeanor against a minor in the last 7 years
- All 20%+ owners must be U.S. citizens or have lawful permanent resident status
- Borrowers must recognize that by applying for a PPP loan, they are agreeing to “remain in compliance” with all applicable workplace safety standards during the life of the loan

PPP: Other New Considerations (cont.)

- Must disclose intended uses of loan proceeds upon application
- Sample application does not ask for NAICS code
 - NAICS code might qualify a borrower for an employee head count above 500 while still being eligible for a PPP loan
- In light of potential detailed “affiliate” disclosures, note that SBA is subject to the Freedom of Information Act
 - Fine print of application states the following information may need to be provided in response to a FOIA request: *“other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity”*

PPP: Enforcement Reminder

- Sample application is very clear that if PPP funds are procured or utilized impermissibly, then the government retains ability to pursue hefty fines, civil and/or criminal charges

Conclusion / Q&A

- The materials released by Treasury and SBA on March 31, in my opinion, create more uncertainty and generate new questions
 - Very few of the initial questions/ambiguities have been addressed by these materials
- That said, we will do our best to answer some questions during our remaining time today
- **Final Reminder: Contact Your Bank Day!**



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