

Payroll Protection Program Loans

April 2020

Erik Pahl, General Counsel, Summus Healthcare
(a division of Premier)

PPP Loans

- ▶ **More Definitive Guidance Coming**
 - ▶ SBA must issue regulations by April 27, 2020
- ▶ The CARES Act modifies Section 7(a) of the Small Business Act. New “Paycheck Protection Loans” will be available during the “covered period,” from February 15, 2020 -June 30, 2020
- ▶ The loans are available from Treasury approved banks and credit unions.
- ▶ You don’t need to establish that you were unable to get credit elsewhere. No personal guarantee is required. No collateral is required.
- ▶ Program open to June 30, but funding cap, and loans are first come first served. Max loan is capped at \$10M.
- ▶ Upfront loan origination fees waived

PPP Loans

Paycheck Protection Loans

- ▶ Term of the loan: maturity 2 years
- ▶ Interest rate of 1%
- ▶ Deferral of repayment for 6 months.
- ▶ There will be no prepayment penalties, no guarantee fees, and no yearly fees

PPP Loans

- ▶ **Eligible Entities:**

- ▶ “Small business concern”
- ▶ Any Business concern, nonprofit organization (Section 501(c)(3), Section 501(c)(19) veterans organizations), or tribal business concern if it has no more than the greater of 500 employees
- ▶ If applicable, the size standard in number of employees for the industry (NAICS Code) established by the SBA.

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- ▶ **Maximum Loan Amount is Lesser of:**
 - ▶ The sum of the Average monthly payroll costs for the 1 year prior to the date on which the loan is made x 2.5, PLUS
 - ▶ Any outstanding disaster loan under Section 7(b)(2) of the SBA (Economic Injury Disaster Loan - EIDL) that was made after January 31, 2020 and refinanced into a 7(a) loan.
 - ▶ If you weren't in business from February 15, 2019 through June 30, 2019, take 2.5 multiplied by the average payroll costs from January 1, 2020 and ending February 29, 2020.
 - ▶ \$10M

PPP Loans - Payroll Costs Include

- ▶ Payments of compensation to employees for: Wages, commission, salary (not to exceed an annualized rate of pay of \$100,000)
- ▶ Self-employed taxpayers: net earnings from self employment up to \$100,000
- ▶ Vacation, parental, family, medical or sick leave,
- ▶ Severance, separation pay, and any retirement benefit
- ▶ Group health care benefit pay including insurance premiums
- ▶ State or local tax on the compensation of employees
- ▶ Not counted:
 - ▶ Compensation above \$100,000 for any one employee (on an annualized basis), Independent contractors
 - ▶ Federal Employment or Withholding taxes
 - ▶ Compensation for employee whose principal residence is outside US
 - ▶ Qualified sick leave and family emergency leave wages for which a credit is allowed under Sections 7001 and 7003 of FFCRA

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Acceptable Use of Funds

- ▶ Payroll costs,
- ▶ Group health care benefits,
- ▶ Interest on any mortgage obligation
- ▶ Rent
- ▶ Utilities
- ▶ Interest on other debt incurred before February 15, 2020.

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The borrower needs to certify:

- ▶ That the uncertainty of current economic conditions makes the loan necessary to support the ongoing operations of the borrower,
 - ▶ That the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments and utility payments,
 - ▶ That the borrower has not and will not receive another loan under the Paycheck Protection Program from February 15, 2020 through December 31, 2020.
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- ▶ Applicants must submit SBA Form 2483 and supporting documentation.
 - ▶ Must list all 20% owners, address, TIN
 - ▶ Lenders must submit SBA Form 2484.

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Supporting Documentation:

- ▶ Articles of Incorporation and Bylaws / Operating Agreement
- ▶ Copy of Drivers License for all Owners
- ▶ Payroll expense verification documents, such as IRS Form 940 and 941, and payroll reports with bank statements
- ▶ Most recent mortgage or rent statements
- ▶ Trailing 12-month P&L statement
- ▶ Most recent utility bills

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Loan forgiveness feature: Section 1106 of the CARES Act

- ▶ If the Paycheck Protection Loan is used for its intended purposes, the first 8 weeks worth of certain payments will be forgiven on a tax-free basis.
 - ▶ Interest on a mortgage incurred before February 15, 2020
 - ▶ Rent for a lease in force before February 15, 2020
 - ▶ Utilities for which service started before February 15, 2020
 - ▶ Payroll costs (not to exceed \$100,000 annualized compensation per employee)
 - ▶ No more than 25% of loan forgiveness amount may be attributable to non-payroll costs
- ▶ Forgiveness amount is not taxable income to borrower

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- ▶ Forgiveness amount will be reduced if you cut employees during the 8-week period, or cut salary of some employees during the 8-week period
- ▶ **The amount eligible for forgiveness is reduced by multiplying the forgiveness amount by:** The quotient obtained by dividing:
The average number of full-time equivalent employees of the borrower during the 8-week period from the date the loan originated, by either (at applicant's option):
 - ▶ The average number of full-time employees per month from February 15, 2019 through June 30, 2019, or
 - ▶ The average number of full time employees per month from January 1, 2020 through February 29, 2020

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- ▶ **The amount eligible for forgiveness is also reduced by:** The total reduction in salary during the 8-week period of an employee earning less than \$100,000 (on an annualized basis) by more than 25% when compared to the most recent quarter before the 8-week period began.
- ▶ **Restoration of Forgiveness**
 - ▶ If an employer replaces any full-time employees or restores any substantially reduced wages that occurred during the period by June 30, 2020, the full forgiveness is again allowed.

PPP Loans

- ▶ **Application for Forgiveness Must Include:**
 - ▶ Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the covered period (8 weeks after the loan was taken out)
 - ▶ Documentation verifying payments on mortgages, rent and utilities
 - ▶ A certification that the information is true and correct, and that the amount of forgiveness requested was used to retain employees.
- ▶ Lenders may request SBA purchase the expected forgiveness amount of PPP loan at end of the 7th week following loan origination.

Questions & Answers from Webinar

How do you count part-time employees when estimating payroll?

- ▶ Guidance from SBA: What qualifies as “payroll costs?” Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.
- ▶ General conclusion from Legal Counsel: Part-time employee costs should be included.

Questions & Answers from Webinar

If my business is an S corp and my W2 income is 96K per year, do I qualify for payroll total for loan purposes? Also, if PPP loan is used according to the rules, is it then totally forgiven or only a part of it is? And is it taxable?

- ▶ S Corp status should not matter. The total amount of W2 salary expense should not matter; eligible businesses are described as follows:
 1. You are eligible for a PPP loan if you have 500 or fewer employees whose principal place of residence is in the United States, or are a business that operates in a certain industry and meet the applicable SBA employee-based size standards for that industry, and:
 - i. You are:
 2. A small business concern as defined in section 3 of the Small Business Act (15 USC 632), and subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act;
 3. A tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business; and
 - ii. You were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.
 4. You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self employed individual, you were in operation on February 15, 2020.
 2. You were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.
- ▶ You must also 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 any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.
- ▶ Forgiveness of a loan applies to the first 8 weeks of expenses (and at least 75% of loan must be spent on payroll). The forgiven amount is not taxable.