



THE CARES ACT: GOVERNMENT FINANCING OPTIONS FOR BUSINESSES

PRESENTED BY

Joe Bailey | Partner

Participants



JOE BAILEY

PARTNER
PERKINS COIE



**MARIANNE
BRAUNSTEIN**

VICE PRESIDENT OF
PRODUCT & MARKETING
CLINICIENT, INC.

Some Housekeeping

Using GoToWebinar®

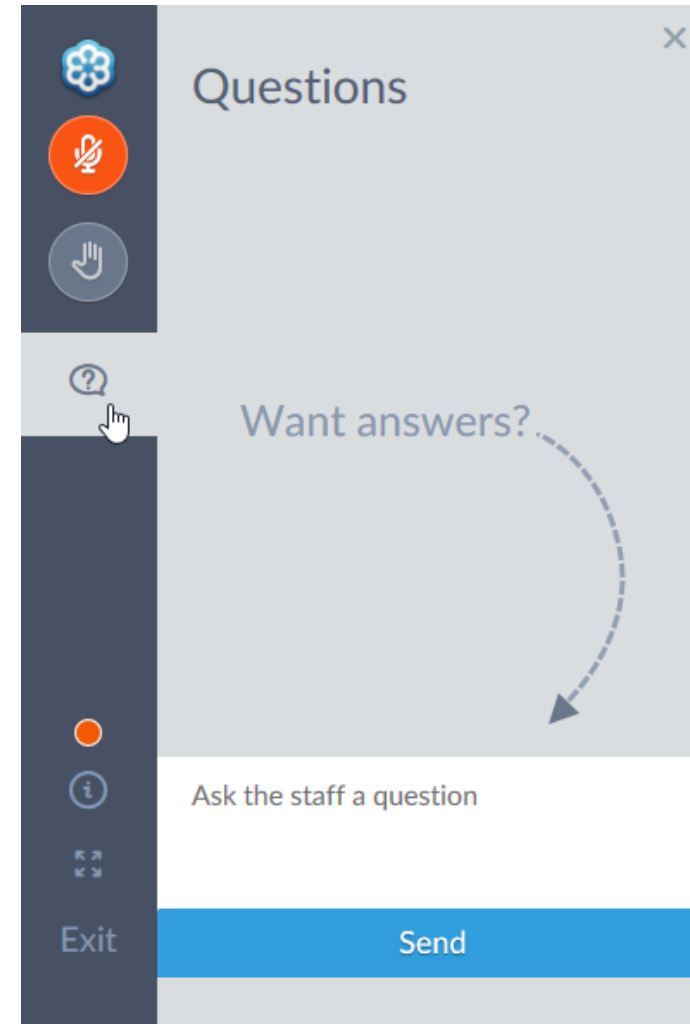
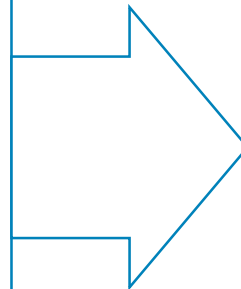
Click on orange arrow to show or hide panel

This Session will be recorded

- Link to the recording and resources will be emailed to all registrants

Please use the “Questions” Panel

- Please do not use the “raise hand”
- Questions will be answered at the end of the webinar as time allows
- Additional questions will be answered in emailed resources



The Fine Print

This presentation should not be deemed to constitute a legal opinion or to provide definitive legal advice as to the conclusion that a regulator would reach on the matters discussed herein. Many of the determinations under the CARES Act are highly fact-specific and need to be reviewed carefully with the Applicant's counsel and applicable lender. In addition, this presentation is designed to provide information to you — not to provide legal advice or create an attorney-client relationship that does not already exist. Accordingly, neither your attendance at this webinar nor any communication with Perkins Coie LLP ("PC") or any of its attorneys regarding the same (including if you provide us with confidential information) will, except to the extent otherwise provided in a written agreement with PC, establish an attorney-client relationship with PC or any of its attorneys or otherwise preclude PC or any of its attorneys from representing others with interests adverse to you in this or any other matter.

COVID-19 Loan Programs

NEW LOAN PROGRAMS AVAILABLE TO BUSINESSES IMPACTED BY COVID-19

PPP LOANS

The Paycheck Protection Program (PPP) under the CARES Act authorizes loans totaling up to \$350 billion for “small business concerns” (500 or fewer employees, subject to certain exceptions) using the Small Business Administration’s (SBA) existing 7(a) loan program.

EIDLs

Economic Injury Disaster Loans are made directly by the SBA to businesses that have suffered substantial economic injury from COVID-19 such that they are unable to meet their obligations as they mature or to pay their ordinary and necessary operating expenses. \$10 billion has been allocated for EIDLs related to COVID-19.

MID-SIZE BUSINESS LOANS

\$500 billion allocated to the Department of the Treasury’s Exchange Stabilization Fund for emergency relief to distressed industries. This includes a loan program for mid-size businesses (500-10,000 employees) that have not otherwise received adequate economic relief (loans or loan guarantees under the CARES Act).

The background features a light gray gradient with several overlapping circles of varying shades of gray. A single dotted red circle is positioned on the left side, partially overlapping the other circles.

PAYCHECK PROTECTION PROGRAM LOANS

PPP Loans Under the SBA's 7(a) Loan Program

WHAT ARE PPP LOANS?

- > Made by SBA certified lenders and other lenders authorized by the SBA
- > 100% guaranteed by federal government
- > Available through June 30, 2020
- > Borrower must certify:
 - Uncertainty of current economic conditions makes necessary the loan request to support ongoing operations.
 - Funds will be used to retain workers and maintain payroll or make certain permitted mortgage payments, lease payments, and utility payments.
 - No duplicative SBA business loan.
 - Accuracy of other required documentation

PPP Loans

ELIGIBLE BUSINESSES



In operation on February 15, 2020 and have employees to whom it paid salaries and payroll taxes



500 or fewer employees (or meet the size standard established by SBA for the relevant industry, if larger)



Must include employees of all Affiliates to determine eligibility

- “Affiliate” – Entities that control or under common control
- “Control” – Voting control, board control, and/or negative control over certain matters

PPP Loans – SBA's Affiliation Rules

AFFIRMATIVE CONTROL

- Control through voting shares or Board seats
- Ownership of 50% or more of the applicant's voting securities

NEGATIVE CONTROL

- Ability to block ordinary company actions
- Examples:
 - Prevent quorum
 - Taking on new debt
 - Issuing dividends
 - Setting officers' compensation
 - Making changes to a budget

PPP Loans – SBA's Affiliation Rules

WAIVER OF AFFILIATION RULE

- Waived for:
 - Businesses with an NAICS Code beginning with 72 (food services and lodging) that have 500 or fewer employees per location
 - Business operating as franchises; and
 - Businesses that receive financial assistance from a Small Business Investment Company



PPP Loans – SBA's Affiliation Rules

APPLICATION OF PPP AFFILIATION RULE TO PRIVATE EQUITY OR VENTURE CAPITAL BACKED COMPANIES

MAJORITY OWNERSHIP OF THE VOTING EQUITY?

- Fully diluted cap table
- Options, convertible securities, agreements to merge generally given present effect
- If yes, then affiliation

MINORITY OWNERSHIP

Can a single minority SH prevent a quorum or otherwise block action by the board of directors or shareholders?

- Prevent a quorum=affiliation
- Other blocking rights—focus on operational decisions, not purely protective provisions
- “If the minority investor exercised its right to block every single time it arose, what operational effect would that have?”

OTHER BASES OF AFFILIATION See 13 C.F.R 121.301(f)

Common management, identity of interest, close family relationship, newly organized concern rule

PPP Loan Terms



Maximum Amount =

lesser of:

- 2.5x average monthly payroll cost during the applicable measurement period; and
 - \$10 million
-



Interest Rate =

- No more than 4% (pursuant to the CARES Act)
 - 1% (pursuant to SBA interim final rule issued on April 2, 2020)
-



Payment Terms =

- Deferred for 6-12 months (pursuant to the CARES Act)
- Deferred for 6 months (pursuant to SBA rule)

PPP Loan Terms



Forgiveness =

- Principal amount of loan will be forgiven to the extent used for permitted purposes, subject to certain limitations (pursuant to the CARES Act)
- Principal and interest may be subject to forgiveness (pursuant to SBA rule)



Maturity Date =

To the extent not forgiven, loan is to have maturity date of:

- up to 10 years after applicant applies for loan forgiveness (pursuant to the CARES Act)
- 2 years after applicant applies for loan forgiveness (pursuant to SBA rule)



Loan Fees =

- SBA loan fees waived
- Agent fees incurred in applying for PPP Loans are to be paid by the lender

PPP Loan Terms



Collateral =

- 7(a) collateral requirements waived for PPP Loans



Personal Guarantees =

- 7(a) personal guarantees from principals (owners) waived for PPP Loans



Permitted Uses =

Payroll Costs (up to \$100,000 per individual, on an annualized basis) and other employee salaries, commissions, and other compensation; group healthcare benefits during periods of paid sick, medical, or family leave, and insurance premiums; rent payments; interest on mortgages; utility payments; and payment of interest on other debt incurred prior to February 15, 2020.

PPP Loans – Where and How to Apply?

AVAILABLE LENDERS & ONLINE PORTALS

- A wide variety of federally regulated lenders are authorized to issue PPP Loans
- Your existing lender or bank is probably the best place to start
- Applications are being processed on a first-come, first-served basis, creating a sense of urgency and confusion
- Many lenders have announced that they will launch their online portals today (April 6, 2020) to allow for PPP loan applications
- The process to apply will be largely determined by your specific lender

SBA regional director: 'We're being bombarded right now' with PPP loan

An onslaught of applications for #PaycheckProtectionProgram loans for #smallbiz is creatin...



On PPP launch day, few local banks are accepting stimulus-loan

Many small businesses in Greater Boston who are hoping to receive their slice of the \$349 billion stimulus pie were still ...



UPDATE over \$1,800,000,000 #PPPloan now processed by @SBAgov mostly all from community banks. Big banks taking in large amounts but not yet submitted in these numbers! #CARESAct #SmallBusiness

1:08 PM · Apr 3, 2020 · Twitter for iPhone

PPP Loans – Application Form

FORM 2483

- On April 2, 2020, the SBA released Form 2483, which all PPP lenders will be required to provide to the SBA
- If you haven't already done so, you can begin gathering information called for by Form 2483 since it will be required by all lenders
- Form 2483 calls for the applicant to calculate their Average Monthly Payroll and Loan Request

Average Monthly Payroll:	\$	x 2.5 + EIDL, Net of Advance (if Applicable) Equals Loan Request:	\$
Purpose of the loan (select more than one):			
<input type="checkbox"/> Payroll <input type="checkbox"/> Lease / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain):			

Paycheck Protection Program
Borrower Application Form

03/08 Control No.: 2543-0407
Expiration Date: 09/30/2020

Check One: ☐ Sole proprietor ☐ Partnership ☐ C-Corp ☐ S-Corp ☐ LLC
☐ Independent contractor ☐ Eligible self-employed individual
☐ 501(c)(3) nonprofit ☐ 501(c)(19) veterans organization
☐ Tribal business (sec. 31(b)(2)(C) of Small Business Act) ☐ Other

Business Legal Name: _____

Business Address: _____

Business TIN (EIN, SSN): _____ **Business Phone:** () -

Primary Contact: _____ **Email Address:** _____

Average Monthly Payroll: \$ _____ x 2.5 + EIDL, Net of Advance (if Applicable)
Equals Loan Request: \$ _____ Number of Employees: _____

Purpose of the loan (select more than one): ☐ Payroll ☐ Lease / Mortgage Interest ☐ Utilities ☐ Other (explain): _____

Applicant Ownership
List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

If questions (1) or (2) below are answered "Yes," the loan will not be approved.

Question	Yes	No
1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

If questions (1) or (2) are answered "Yes," the loan will not be approved.

Question	Yes	No
5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? Initial here to confirm your response to question 5:→	<input type="checkbox"/>	<input type="checkbox"/>
6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted, 2) pleaded guilty, 3) pleaded nolo contendere, 4) been placed on pretrial diversion, or 5) been placed on any form of parole or probation (including probation before judgment)? Initial here to confirm your response to question 6:→	<input type="checkbox"/>	<input type="checkbox"/>
7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory?	<input type="checkbox"/>	<input type="checkbox"/>

SBA Form 2483 (04/20) 1

PPP Loans – Application Form (cont.)

FORM 2483

Form 2483 also calls for:

- The applicant's number of employees (SBA OGC's April 4, 2020 letter indicates this may need to be a 12-month average);
- Identification of each owner of 20% or more of the business (presumably based on voting securities, but possibly not);
- Information regarding any other business owned or under common management with the applicant or its owners;
- Details regarding any EIDL obtained between January 31, 2020 and April 3, 2020; and
- Various certifications related to eligibility.

The image shows the Paycheck Protection Program Borrower Application Form (SBA Form 2483). The form is titled "Paycheck Protection Program Borrower Application Form" and includes the SBA logo. It contains various sections for borrower information, including business details, owner information, and certifications. The form is divided into several parts, each with a "Check One" section for selecting the appropriate business type or owner status. The form also includes a section for "Applicant Ownership" and a section for "Certifications" with numbered questions. The form is labeled "SBA Form 2483 (04/20)" at the bottom left.

Paycheck Protection Program Borrower Application Form

OMB Control No. 1545-0047
Expiration Date: 09-30-2020

Check One: ☐ Sole proprietor ☐ Partnership ☐ C-Corp ☐ S-Corp ☐ LLC ☐ Independent contractor ☐ Eligible self-employed individual ☐ 501(c)(2) nonprofit ☐ 501(c)(19) veterans organization ☐ Tribal business (sec. 31(b)(2)(C) of Small Business Act) ☐ Other

DBA or Tradename if Applicable: _____

Business Legal Name: _____

Business Address: _____

Business TIN (EIN, SSN): _____

Business Phone: () - _____

Primary Contact: _____

Email Address: _____

Average Monthly Payroll: \$ _____ **± 2.5 × EIDL, Net of Advance (if Applicable) Equals Loan Request:** \$ _____

Number of Employees: _____

Purpose of the loan (select more than one): ☐ Payroll ☐ Lease / Mortgage Interest ☐ Utilities ☐ Other (explain): _____

Applicant Ownership
List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

If questions (1) or (2) below are answered "Yes," the loan will not be approved.

Question	Yes	No
1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

If questions (1) or (2) are answered "Yes," the loan will not be approved.

Question	Yes	No
5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which federal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? Initial here to confirm your response to question 5: → _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted, 2) pleaded guilty, 3) pleaded nolo contendere, 4) been placed on pretrial diversion, or 5) been placed on any form of parole or probation (including probation before judgment)? Initial here to confirm your response to question 6: → _____	<input type="checkbox"/>	<input type="checkbox"/>
7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory?	<input type="checkbox"/>	<input type="checkbox"/>

SBA Form 2483 (04/20)

PPP Loans – Application Form (cont.)

FORM 2483


- Form 2483 includes important certifications regarding **eligibility** and *good faith* certifications regarding the **necessity** of the loan, the **use of the loan proceeds**, and **documentation** obligations.

- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.

Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

 Paycheck Protection Program
Borrower Application Form

By Signing Below, You Make the Following Representations, Authorizations, and Certifications:

CERTIFICATIONS AND AUTHORIZATIONS

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Order, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by initialing next to each one:

☐ The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.

☐ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

☐ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule. I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

☐ The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

☐ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.

☐ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.

☐ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 18 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

☐ I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Signature of Authorized Representative of Applicant _____ Date _____
Print Name _____ Title _____

SBA Form 2483 (04/20) 2


PPP Loans – Application Form (cont.)

FORM 2483

- Prospective borrowers should carefully consider their ability to make these certifications because potential fraud liability, exposing the applicant to treble (3x) damages, and criminal liability may apply.
- This could include liability for applying for a loan when you do not meet the eligibility requirements.

The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

 Paycheck Protection Program
Borrower Application Form

By Signing Below, You Make the Following Representations, Authorizations, and Certifications:

CERTIFICATIONS AND AUTHORIZATIONS

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by initialing next to each one:

☐ The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.

☐ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

☐ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

☐ The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

☐ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.

☐ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.

☐ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

☐ I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Signature of Authorized Representative of Applicant _____ Date _____

Print Name _____ Title _____

SBA Form 2483 (04/20) 2

PPP Loans – Calculating the Loan Amount

LOAN AMOUNT BASED ON AVERAGE MONTHLY PAYROLL COSTS, SUBJECT TO ADJUSTMENTS

- **Step 1 – Determine applicable measurement period:**
 - **General Rule:** One-year period prior to the loan (pursuant to CARES Act), although the SBA rules and application form indicate that many applicants will use calendar year 2019
 - **Seasonal businesses:** Can elect between (1) February 15, 2019 through June 30, 2019, OR (2) the 12-week period beginning on March 1, 2019
 - **Newly formed businesses:** If not in business from February 15, 2019 through June 30, 2019, can elect to use period of January 1, 2020 through February 29, 2020

Average Monthly Payroll Costs =
$$\frac{(\text{Payroll Costs} - \text{Excluded Costs})}{\text{Number of Months in Applicable Period}}$$

Maximum Loan Amount =
(Average Monthly Payroll Costs x 2.5)
+ EIDL that is required to be repaid

Actual Loan Amount = lesser of
\$10M and the Maximum Loan Amount

PPP Loans – Calculating the Loan Amount (cont.)

LOAN AMOUNT BASED ON AVERAGE MONTHLY PAYROLL COSTS, SUBJECT TO ADJUSTMENTS

- **Step 2 – Calculate total “Payroll Costs” for the applicable measurement period:**
 - **General Rule:** any compensation with respect to employees that is a—
 - salary, wage, commission, or similar compensation;
 - payment of cash tip or equivalent;
 - payment for vacation, parental, family, medical, or sick leave;
 - allowance for dismissal or separation (including severance payments);
 - payment required for the provisions of group health care benefits, including insurance premiums;
 - payment of any retirement benefit; or
 - payment of State or local tax assessed on the compensation of employees
 - **Independent Contractors and Sole Proprietorships:** wages, commissions, income, net earnings from self-employment, or similar compensation, not to exceed \$100,000 in 1 year, as prorated

PPP Loans – Calculating the Loan Amount (cont.)

LOAN AMOUNT BASED ON AVERAGE MONTHLY PAYROLL COSTS, SUBJECT TO ADJUSTMENTS

- **Step 3 – Subtract excluded costs:**

- the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period;
- taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986;
- any compensation of an employee whose principal place of residence is outside of the United States;
- qualified sick leave wages for which a credit is allowed under the Families First Coronavirus Response Act (FFCRA); or
- qualified family leave wages for which a credit is allowed under the FFCRA.

PPP Loans – Calculating the Loan Amount (cont.)

LOAN AMOUNT BASED ON AVERAGE MONTHLY PAYROLL COSTS, SUBJECT TO ADJUSTMENTS

- **Step 4** – Calculate the *average monthly payroll costs* by dividing the amount calculated under steps 1-3 by the number of months in the applicable measurement period (12 for most applicants), and then multiply the quotient by 2.5.
- **Step 5** – Add the amount of any EIDL that was received between January 31, 2020 and April 3, 2020 that is required to be repaid – exclude the amount of any "advance" under an EIDL COVID-19 loan. The resulting amount is the maximum loan amount.
- **Step 6** – The actual loan amount is the lesser of the maximum loan amount calculated above, OR \$10 million

PPP Loans

FORGIVENESS

- CARES Act provides for forgiveness of the principal amount loaned under the PPP loans based on the amount used for permitted purposes, subject to limitations for:
 - A reduction in the number of full-time equivalent employees during the 8-week period after the loan is made; or
 - A reduction in compensation for employees who have a salary of less than \$100,000 on an annualized basis.
- However, such reduction may not apply if the reduction in headcount or salaries is “eliminated” by June 30, 2020.
- SBA’s April 2, 2020 Interim Final Rule indicates that *interest* accrued on a PPP Loan may also be subject to forgiveness.
- Additional guidance is due to be issued by the SBA regarding loan forgiveness by April 26, 2020.

PPP Loans

COMMON QUESTIONS

What should companies do if they are backed by investors with protective provisions and other forms of “negative” control, like those common in venture-backed companies?

What constitutes “necessity” that is sufficient to certify that, “Uncertainty of current economic conditions makes necessary the loan request to support ongoing operations”?

Should I use payroll data from 2019, or the trailing 12-month period?

What if I acquired a business in 2019?

How is the \$100,000 limit calculated?

Can I include payments made to independent contractors?

The background features a light gray gradient with several overlapping circles of varying shades of gray. A single dotted red circle is positioned on the left side, partially overlapping the other circles.

ECONOMIC INJURY DISASTER LOANS

Economic Injury Disaster Loans (EIDLs)

WHAT ARE EIDLs?



Loans made directly by the SBA to small businesses that have suffered substantial economic injury from COVID-19



Businesses unable to:

- meet their obligations as they mature; or
 - pay their ordinary and necessary operating expenses.
-



Loss of profits/sales alone insufficient

ELIGIBLE BUSINESSES

>

Must qualify as a “small business concern” under SBA guidelines

>

Annual revenue & employee headcount based on NAICS code number

>

SBA affiliation rules apply (waiver of these rules for certain businesses under the PPP Loans does not apply to EIDLs)

>

Emergency EIDL grants – Business must self certify as eligible

LOAN TERMS

- Loan amount determined by actual economic injury, capped at \$2 million
- Interest rate capped at 3.75% for small businesses
- Repayment term determined on case-by-case basis (up to 30 years)
- Loans over \$200K may require personal guarantees from principals
- Loans over \$25K may require collateral

- Loan forgiveness generally does not apply.
- EIDLs obtained prior to April 3, 2020 can be refinanced as a PPP Loan
- Applicants may request emergency EIDL grant (up to \$10K), which SBA must distribute within three days. Such emergency EIDL grants need not be repaid, even if the underlying EIDL loan application is denied.

EIDL PERMITTED USES

- Working capital
- Includes:

**Fixed
Debts**

Sick leave

Payroll

**Accounts
Payable**

**Other
Obligations
that Cannot
be Met
Because of
COVID-19**

WHERE AND HOW TO APPLY

Applications for EIDLs are made directly with the SBA through the SBA's website:

<https://disasterloan.sba.gov/ela/Information/EIDLLoans>

PPP Loans and EIDLs

CAN A BUSINESS OBTAIN BOTH LOANS?

- Yes, so long as EIDL is used for purposes other than permitted uses of PPP Loan
 - Example: Trade payables
- Ability to refinance EIDL made on or after January 31, 2020 into a PPP Loan
 - Advantage: Loan forgiveness for PPP Loans

For additional guidance for businesses,
visit perkinscoie.com/coronavirus.