BANKS AND CREDIT UNIONS
SBA Paycheck Protection Program

Overview
The information below reflects changes made by the *Paycheck Protection Program Flexibility Act*. The Coronavirus Aid, Relief, and Economic Security (CARES) Act created a new Small Business Administration (SBA) loan program, called the "Paycheck Protection Program" (PPP). The Paycheck Protection Program provides small businesses with zero-fee loans of up to $10 million to cover 10 weeks of payroll and other operating expenses. Small businesses have 24 weeks or until December 31, 2020, whichever is earlier, to spend their PPP funds. They can seek forgiveness for PPP funds spent during those 24 weeks on eligible payroll and overhead costs, such as rent, mortgage interest payments, and utility costs. Small businesses must spend at least 60 percent of the funds on payroll costs and no more than 40 percent on overhead costs. For any amount that is not forgiven, small businesses must repay the loan at 1 percent interest over five years. Payments on any outstanding loan amounts are deferred until the lender receives the amount of the loan that was forgiven or for 10 months for small businesses that did not seek loan forgiveness. **PPP loans are available through December 31, 2020.**

Authorization to Issue PPP Loans
Banks and credit unions that already provide SBA loans are authorized to provide PPP loans, as is the SBA itself. The SBA and the Secretary of the Treasury have automatically authorized new lenders to provide PPP loans, including all federally-insured banks and credit unions in good standing with their regulator. For the full list of types of lenders with approval to issue PPP loans, please see the Department of Treasury's interim final rule.

Borrower Eligibility
The following entities may apply for a loan under this program:

- A business or entity that was in operation on February 15, 2020;
- A small business, a 501(c)(3) nonprofit organization, a 501(c)(19) veterans organization, or tribal business concern that has fewer than 500 employees, or the applicable size standard in number of employees for the North American Industry Classification System (NAICS) industry as provided by SBA, if higher.
- Sole proprietorships, independent contractors, or self-employed individuals.
- Businesses that employ not more than 500 employees per physical location and have an NAICS code beginning with 72, for which the affiliation rules are waived.
- Affiliation rules are also waived for any business operating as a franchise that is assigned a franchise identifier code by the SBA, and any company that receives funding through a Small Business Investment Company.

Application Requirements
The CARES Act provides a few application requirements for PPP loans, and it waives a number of requirements that usually apply to SBA loans that lenders should be aware of:

- A borrower must make a good faith certification that economic uncertainty makes the loan necessary to support ongoing operations and that the funds will go towards retaining workers, maintaining payroll, or making mortgage interest payments, rent payments, or utility payments;
- The borrower must also certify that it does not have another loan pending for the same purpose or for duplicative amounts or have received a loan for the same purpose;

- Application fees are waived for both the borrower and the lender;
- The borrower does not need to demonstrate that it is unable to obtain credit elsewhere; and
- The borrower does not need to provide collateral or a personal guarantee.

Evaluating Eligibility
The CARES Act provides delegated authority, which is the ability for lenders to make determinations on borrower eligibility and creditworthiness without going through all of SBA's channels, to all current 7(a) lenders who make these loans to small businesses, and provides that same authority to lenders who join the program and make these loans.

The CARES Act also limits the lender's evaluation of a borrower to the following criteria:
- Whether the entity was in operation on February 15, 2020; and
- Had employees for whom it paid wages and payroll taxes; or
- Paid independent contractors.

Lenders do not need to verify the information provided by borrowers. Lenders may rely on borrowers' documentation and attestations that the information is correct, and the SBA will hold lenders harmless if the borrower made an error or misrepresentation.

Loan Size:
- Borrowers may apply for a maximum loan size of 250 percent of average monthly payroll costs for the one-year period before the date of the loan.
- For seasonal employers, the maximum loan size is 250 percent of average monthly payroll costs from February 15, 2019, to June 30, 2019. Seasonal employers can opt to choose March 1, 2019, as the time period start date.
- For entities that were not in business this time last year, the maximum loan is equal to 250 percent of their average monthly payroll costs between January 1, 2020, and February 29, 2020.
- The loan maximum in all cases is $10 million.

Payroll costs for the purposes of determining loan size include:
- Compensation (salary, wage, commission, or similar compensation, payment of cash tip)
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of state or local tax assessed on the compensation of employees

The following costs do not count towards loan size: compensation over $100,000, certain withheld taxes, compensation for employees outside of the United States, and required leave under the *Families First Coronavirus Response Act*, for which a credit is allowed.

Use of Loan Funds:
Borrowers must use 60 percent of loan funds for:
- Payroll costs (all costs included above)
- Costs related to group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums

- Employee salaries, commissions, or similar compensations (except as excluded above)

Borrowers may use up to 40 percent of the funds for:

- Payments of interest on any mortgage (but not payment or prepayment of principal)
- Rent
- Utilities
- Interest on any other debt obligations that were incurred before the February 15, 2020.

Loan Terms

For any amounts not forgiven, the loan term is five years. The interest rate is set at 1 percent, and borrowers may not be charged loan fees or prepayment fees. The remaining loan balance continues to be guaranteed by the SBA.

Loan Deferment

The CARES Act allows complete deferment of PPP loan payments until the date on which the lender receives payment for the amount of the PPP loan that is forgiven, or ten months after the end of the 24 weeks if the small business does not apply for loan forgiveness.

Loan Forgiveness:

Borrowers may apply to their lender to forgive the PPP loan for the amount of payroll costs plus payments of mortgage interest, rent, and utilities incurred during the 24-week period after the loan is disbursed. The amount that can be forgiven is proportionate to maintaining employees and wages. Borrowers must provide the following in their application to the lender in order to have their loan forgiven:

- Documentation verifying the number of employees on payroll, their pay rate, IRS payroll and state income tax filings, and unemployment insurance filings;
- Documentation verifying payments of rent, mortgage interest, utilities, and other debt; and
- Certification from the business that the documentation provided is true and that amount of the loan that is being forgiven was used in line with the program's requirements.

A lender must make a decision on loan forgiveness within 60 days of receiving an application. If a lender receives the documentation required for loan forgiveness and determines that the borrower accurately verified the covered payments, the lender is held harmless for any errors or misrepresentations by the borrower and cannot be penalized by the SBA.

Reduction in Forgiveness

Loan forgiveness is reduced if the borrower reduces its number of employees:

- The amount of forgiveness is reduced by multiplying the total amount that can be forgiven by a ratio of the number of FTE employees during the 24-weeks following origination of the loan and the number of FTE employees from before the crisis;

Loan forgiveness is also reduced by reductions in salary and wages:

- If total salary or wages decrease by more than 25 percent (compared to the most recent full quarter before the crisis), the amount sought for forgiveness is reduced by that amount.
- Employees for the purpose of this subsection are limited to those who make less than $100,000

- Employers of tipped workers may seek forgiveness for additional wages paid to tipped employees.

Exception for re-hiring: if an employer had to reduce its workforce or wages after February 15, 2020, and the employer hires them back or restores wages on or before December 31, 2020, the employer can seek forgiveness for the full amount allowed.

Small businesses that are unable to maintain the same number of employees on payroll or the same wages as before the public health crisis are eligible for full forgiveness if the small business is able to document:

- An inability to rehire employees that were on the payroll before February 15, 2020;
- An inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
- An inability to return to the same level of business activity that the business was operating at before February 15, 2020, due to compliance with requirements or guidance issued by the Secretary of Health and Human Services, the Centers for Disease Control and Prevention, or the occupational Safety and Health Administration between March 1 and December 31, 2020, related to sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Lender Compensation
Processing fees will be based on the balance of the financing outstanding at the time of final disbursement:

- Loans $350,000 and under: 5 percent
- Loans greater than $350,000 to $2 million: 3 percent
- Loans greater than $2 million: 1 percent

Forgiveness payment: The SBA will pay the lender for any amount of PPP loans that are forgiven plus interest accrued through the date of payment.

Secondary Market Sales
Lenders may sell a PPP loan or pool of loans into the secondary market. The SBA will not collect any fees.

Regulatory Relief for PPP Loans
PPP loans are given a risk-weight of zero percent. Any modifications to PPP loans are not required to be accounted for as “troubled debt restructuring” for the life of the loan.

SBA Regulations for PPP Loans
Please visit the websites for the SBA and the Department of Treasury to find the interim final rules and frequently asked questions for this program.