Paycheck Protection Program (the “PPP”)

Under a new federal program, a small businesses may be eligible for a PPP loan to be used primarily to maintain payroll (and which will be forgiven if used for qualifying purposes).

ELIGIBILITY AND KEY TERMS

- **Principal Amount**: One loan, lesser of $10 million or 2.5x average monthly payroll (based on 2019 annual)
- **Interest Rate**: 1.00%
- **Term**: 5 years (for loans made after 6/5/20; lenders and borrowers may mutually agree to amend the term of loans made prior to 6/5/20 to reflect a 5 year term), with payments deferred until forgiveness is determined (or 10 months after the end of the covered period, if the borrower has not applied for forgiveness by that time)
- **Size**: Business must meet an industry-specific size limit (usually under 500 full time + part time employees), determined on a per location basis for hotels & restaurants
- **Employees**: Must have employees on payroll prior to 2/15/20. Sole proprietorships and self-employed can apply
- **Other Loans**: If borrower already has an Economic Injury Disaster Loan (“EIDL”) used for payroll expenses, PPP will be used to refinance that loan
- **Active**: Must have been operational on or before 2/15/20
- **Forgiveness**: Conversion of loan to grant through forgiveness of amounts used for payroll and other costs incurred or paid during the period from disbursement through the earlier of (i) 24-weeks after disbursement or (ii) 12/31/20
- **Use of Proceeds**: To be eligible for full forgiveness, at least 60% of proceeds must be used for payroll expenses; up to 40% may be used for business-related expenses (rent/mortgage, utilities, interest payments)

LOAN AMOUNT AND FORGIVENESS

- **Step 1**: Add up payroll costs from the last 12 months for full time equivalent employees (“FTEs”) whose principal place of residence is the United States
- **Step 2**: Subtract any compensation paid to an employee in excess of an annual salary of $100,000, or, if you are an independent contractor or sole proprietor, subtract net profits in excess of $100,000 per year
- **Step 3**: Calculate average monthly payroll costs (divide the amount from Step 2 by 12)
- **Step 4**: Multiply the average monthly payroll costs from Step 3 by 2.5
- **Step 5**: Add the outstanding amount of any EIDL taken from 1/31/20 through 4/3/20, less the amount of any “advance” under an EIDL
- **Reduction of Employees**: If applicant reduces number of FTEs, amount forgiven will be reduced proportionally, subject to certain exceptions/safe harbors where:
  - an employee was fired for cause, voluntarily resigned, voluntarily requested and received a reduction of hours
  - applicant made a good-faith, written offer to rehire employee, which was declined, and notified the state unemployment insurance office; or
  - applicant is unable to rehire certain former employees or similarly qualified individuals or return to the same level of business due to COVID-19 restrictions
- **Reduction of Wages**: If applicant reduces wages by more than 25% per employee (unless employee makes over $100K), amount forgiven will be reduced proportionally
- **Cure for Reductions**: If the applicant has either reduced wages or number of employees and either rehires or restores wages by 12/31/20, amount forgiven will not be reduced

APPLYING FOR A PPP LOAN

Visit a participating lender’s website to apply. Participating lenders can be found using this tool. Each lender has its own portal and form, but follows the guidelines of this application. The deadline to apply is June 30, 2020.

Each bank might request different documents, but generally you might need:

- Payroll processor records
- Payroll tax filings
- Form 1099-MISC
- Income and expenses from a sole proprietorship
- Other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount

For more information and a model application in English and Spanish: https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program.

This information is current as of June 11, 2020, and should not be considered comprehensive. This is not a substitute for, and should not be relied upon as, legal or professional advice; we recommend that you consult professional advisors for guidance on your individual circumstances. Nothing contained herein creates an attorney-client relationship with Cleary Gottlieb. This information should not be construed as an endorsement of any specific financial program.