

CARES Act Service provider webinar

April 9, 2020



Notes to these materials

- These materials are being provided as an update in summary form to the earlier presentation of the available information on various federal programs to industry participants; these materials should not be relied upon as legal advice.
- The agencies responsible for the programs continue to provide updated information and we encourage industry participants to check on the updated materials at the US Treasury Department website as well as the Small Business Administration website.

CARES Act – Additional Details

Paycheck Protection Program (PPP) Updated Details

- Access to the *Payroll Protection Program* is through existing SBA-certified lenders – additionally any federal insured depository institutions / credit unions / Farm Credit System institutions will be eligible to participate.
- The SBA is waiving its standard guaranty fees, as well as its upfront and annual servicing fees – there should not be any fees from either your lender or the SBA.
- The underwriting required by your lender is very limited: (i) was the borrower in operation on February 15, 2020; (ii) did the borrower have employees for whom it paid salaries and payroll taxes; and (iii) verifying the dollar amount of the average monthly payroll costs.
- Loan proceeds will be forgiven provided:
 - Used for payroll costs, most mortgage interest, rent and utility costs over 8 weeks after loan is made, and
 - Employee and compensation levels are maintained during this 8-week period

PPP Updated Details - continued

- Loan proceeds can be used for:
 - Payroll costs, including benefits
 - Interest on mortgage obligations incurred prior to February 15, 2020
 - Rent, under lease agreements in force before February 15, 2020
 - Utilities, for which services began before February 15, 2020
 - Employee and compensation levels are maintained during this 8 week period
- Calculating Payroll costs:
 - Salary, wages, commission, or tips (capped at \$100,000 on an annualized basis for each employee)
 - Employee benefits, including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; group health care, including premiums, payment for retirement benefits; and
 - State and local taxes assessed on compensation

PPP for Independent Contractors or Sole Proprietors

- Calculating Payroll costs:
 - wages, commission, income, or net earnings from self-employment (capped at \$100,000 on an annualized basis for each individual)
 - benefits, including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; group health care, including premiums, payment for retirement benefits;
 - State and local taxes assessed on compensation

PPP – details to evidence payroll costs; size of borrower

- Evidencing payroll costs:
 - Borrowers must show support for their calculations of their average monthly payroll costs
 - If you can provide the payroll report from your payroll processor, the lender should accept the information provided
 - The US Treasury Department's 'interim rules' for the PPP call out that lenders are permitted to rely on borrower's representations including with respect to amounts required to be excluded from payroll costs
- Evidencing size of the borrower – need to have no more than 500 employees unless defined as a 'small business concern' under Section 3 of Small Business Act
 - Lenders are permitted to rely on certification by borrower that they comply

PPP – calculating loan forgiveness

- Calculating loan forgiveness:
 - Payroll costs should be at least 75% of amount forgiven
 - Other costs that may be forgiven are mortgage interest, rent, and utilities (all relating to commitments entered into prior to February 15, 2020) (should be no more than 25% of the amount being sought to be forgiven)
- Adjustments to loan forgiveness
 - Will be reduced if the borrower reduces its full-time employee headcount
 - Will be reduced if the borrower decrease salaries and wages by more than 25% of any employee who made less than \$100,000 in 2019

PPP – Use of PEO – calculating the payroll

- US Treasury answers a question on the use of PEOs (4/8/20):
 - The SBA acknowledges that some borrowers are required to PEOs or similar payroll providers under state registration laws to report wage and other data on the Employer Identification Number (EIN) of the PEO or other payroll provider.
 - In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation.
 - Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes.