



KPPB LAW

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# PAYCHECK PROTECTION PROGRAM WEBINAR

Hosted by South Asian Bar Association of  
North America (SABA) and KPPB LAW

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# Background on Coronavirus Aid, Relief & Economic Security Act (**CARES Act**)

- **Stimulus Bill** passed by Congress on March 27, 2020
- **CARES Act** includes many different economic stimulus programs:
  - Funding for healthcare
  - Expansion to unemployment benefits
  - Funding available for major industries
  - Small business relief programs
  - Individual tax credit advances

# Paycheck Protection Program (PPP)

**The CARES Act establishes the Paycheck Protection Program and provides:**

- \$349 billion to the Small Business Administration (SBA) to fund forgivable, low-interest loans to small businesses to cover payroll expenses
- Funding through the SBA's current 7(a) program
- 100% loan guarantee by the SBA

# What We Know Today

Lenders have been receiving PPP loan applications in the hundreds of thousands since April 3, 2020.

As of April 7:

- **\$50 billion in loan commitments + 178K loans being processed** (*source: Politico*)
- **JPMorgan received 375K requests to apply for \$40B in PPP loans** (*source: Forbes*)
- **Bank of America received 250K applications or several thousand per hour** (*source: Forbes*)

# What We Know Today, continued

- **Existing clients**

Major banks are loaning exclusively to existing business customers or giving priority to their existing clients  
*(JPMorgan, Bank of America, Fifth Third Bank & T.D. Bank)*

- **More funding**

Congress is working to approve additional funding for PPP loans

- **Even more funding**

The Treasury requested \$250 billion in additional money on April 7 to fund SBA loans

# Who Can Apply?

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## To qualify for a PPP loan, a business must:

- Have been in operation as of February 15, 2020
- Have employees (or have paid independent contractors)
- Be an “eligible business”

# Who Can Apply: “Eligible Business”

An “eligible business” is a:

- Small business with 500 or fewer employees
  - Business that meets the SBA’s size qualification (for its corresponding industry)
  - **SBA-approved franchise**
  - **NAICS Sector 72 business** (accommodation & food services) *with 500 or fewer employees at each physical location*
  - **Tax-exempt veteran group**, non-profit or tribal business *with fewer than 500 employees*
  - **Self-employed** individual
  - **Independent contractor**
  - **Sole proprietorship**
- For affiliation purposes, 13 CFR Sec. 121.301 applies

# Who is **NOT** Eligible

- Businesses not located in the United States
- Businesses engaged in illegal activity
- Employers of household employees
- Businesses in which an owner of 20% or more equity is incarcerated, on probation, convicted of a felony in the past five years, or is facing criminal charges



# What About **Venture Capital & Private Equity-Backed Businesses?**

Businesses backed by Venture Capital and Private Equity are eligible to apply for the PPP loans **if they qualify and do not trigger the “Affiliation Rule” of the SBA** (13 CFR Sec. 121.301)

Affiliation rules of the SBA require that affiliated businesses count the total number of employees across all affiliates to determine the number of employees for purposes of qualifying as a small business

# What Is An “Affiliate”

## You are a business “affiliate” if:

- Any minority shareholder in a business has the right to prevent a quorum or otherwise block action by the board of directors or shareholders
- Power exists to control or control another
- Any entity that owns or controls a majority (>50%) of voting equity interests

# What About Businesses that use **PEO**?

Businesses that use a **Payroll Employer Organization (PEO)** are still eligible for PPP loans, if:

- Wage + other data are reported via the EIN of a PEO
  - Payroll documentation provided by the payroll provider (that states the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees) acceptable PPP-loan-payroll documentation
- Employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

# What About **Foreign-Owned** Businesses?

## PPP loans **ARE** available to businesses located in the United States, **however:**

- The decision of whether to lend to a U.S. business owned by foreign business entities or individuals is up to the lender
- If the ownership structure violates the SBA's affiliation rules, then a foreign-owned business is ineligible
- Loan proceeds may only be used to pay payroll costs for employees located in the United States

# Applying: **When?**

- **Starting April 3, 2020 until June 30, 2020:**  
Applications are accepted for all eligible businesses *EXCEPT independent contractors and sole proprietorships*
- **Starting April 10, 2020 until June 30, 2020:**  
Applications are accepted for ONLY eligible independent contractors and sole proprietorships

# Applying: **How?**

- Lenders will either require **SBA Form 2843** or have their own application
- Applications require **information about any owners** or 20% or more of equity of the borrower
- Application requires **borrower to make certifications** to be relied on for providing loan funds

# What Are “Certifications”?

**The borrower, or its representative making the application, must certify that the:**

- Borrower is eligible for the PPP loan
- Economic uncertainty makes the PPP loan necessary to support ongoing operations
- Funds will be used for authorized purposes
- Information and documents provided are accurate
- Borrower has not received any other PPP loan

# Apply: Where?

- Applications can be submitted to:
  - Any SBA-approved lenders
  - Any participating federally insured depositories and credit unions
- Most major banks are participants in the PPP program (priority goes to existing customers)
- Some lenders have stopped taking applications or do not have its process up and running (e.g., Wells Fargo)



# Loan Amounts

- Up to 2.5 times average monthly payroll costs for the last 12 months, capped at \$10 million; **plus**
- Any outstanding amount of an Economic Injury Disaster Loan (EIDL) issued from January 31, 2020 – April 3, 2020 being refinanced (less any advance)

# Loan Amounts: Payroll Costs

## Payroll costs **INCLUDE:**

- For most eligible businesses: compensation to employees (*salaries, payment for leave, severance, payment of group health care insurance plans*)
- For independent contractors or sole proprietors: net earnings

## Payroll costs **EXCLUDE:**

- Cash compensation (salary, retirement contributions, etc.) of any employee in excess of \$100,000
- Employer's share of federal employment taxes
- Compensation of any employee who resides outside of the United States

# How Can I Use Funds from the PPP Loan?

## PPP loan money may be used for:

- Payroll costs, including costs related to the continuation of group health care benefits
- Mortgage interest payments (but not principal payments)
- Rent payments on leases effective prior to February 15, 2020
- Utility payments on services contracted prior to February 15, 2020
- Interest payments on debt obligations incurred prior to February 15, 2020
- Refinancing of EIDL loan obtained between January 31, 2020 and April 3, 2020

# Loan Forgiveness

## **Loan forgiveness for up to the full principal amount of the loan and any accrued interest**

- The actual loan forgiveness amount is equal to permissible costs actually incurred in the 8-week period immediately following the disbursement of loan funds
- Borrower will need to provide documentation of actual costs to the lender to apply for loan forgiveness

# Loan Forgiveness: Limitations

- If a borrower reduces its workforce or its workforce's pay by more than 25%, the amount of forgiveness available is reduced
- Payroll costs must comprise at least 75% of the total forgiveness amount
- Any advance received for up to \$10,000 from an EIDL application is subtracted from any forgiveness amount available

## Loan: Terms

- **Interest Rate:** 1%
- **Term Length:** 2 years
- **Deferment:** All payments of principal and interest are deferred for 6 months
- No SBA fees
- No prepayment penalty
- No collateral required
- No personal guaranty required

# Economic Injury Disaster Loan (EIDL)

- PPP loan borrowers may also apply for EIDL loans **as long as the funds are not used for the same purpose**
- EIDL program allows applications for low-interest loans of up to \$2 million to cover economic injury due to COVID-19 through December 31, 2020
- Applications are made directly through the SBA

# Other Considerations

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- PPP participation can affect what payroll tax credits are available
- Only **one** PPP loan is available to a borrower
- All agent fees are paid out of the lender's fees disbursed by the SBA



# QUESTIONS & DISCUSSION



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