



LAW ALERT

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By: Steven J. Kuperschmid, Esq.
Allison Castel, Esq.

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Small Business Administration: Business Loan Program Interim Final Rule

The Small Business Administration (“SBA”) issued Interim Final Rules interpreting aspects of the Paycheck Protection Program (“PPP”). There have been supplemental updated FAQs released by the SBA, which have been included in this alert. It is extremely important to note that the PPP loans are given on a first-come, first-serve basis and that rule making and interpretation is fluid. The initial \$349 billion in funding has been distributed, and a subsequent bill was passed for an additional \$310 billion, bringing the total amount to \$659 billion. Some of these funds will be allocated toward the backlog of initial applications. It is recommended that applications be submitted as soon as possible.

Some key information:

- Payroll costs include:
 - Salary
 - Wages
 - Commissions
 - Similar compensation
 - Cash tips (based upon a reasonable good-faith employer estimate of such tips)
 - Payment for vacation, parental, family, medical, sick leave
 - Allowance for dismissal or separation
 - Payment of retirement benefit
- At least 75 % of the PPP loan proceeds must be used for payroll costs
- A business does not have to qualify as a small business concern under the Small Business Act
 - A business is eligible if it has 500 or fewer employees or the business meets the SBA size standards for the industry in which it operates if applicable
 - A borrower must certify that economic uncertainty makes the loan necessary to support the operations of the applicant
- A business can qualify for PPP as a small business concern if it meets both tests in SBA’s alternative size standard:
 - Maximum tangible net worth of the business is not more than \$15 million and
 - The average net income after Federal income taxes (excluding any carry-over losses) of the business for two fiscal years before the application date is not more than \$5 million

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- Expressly excludes compensation for an employee whose principal residence is outside of the United States and for salary that exceeds \$100,000
 - That exclusion does not apply to non-cash benefits such as defined-contribution retirement plans, employee benefits, state and local taxes assessed on compensation of employees
- Independent contractors may not be included for the purpose of PPP loans
 - Independent contractors are eligible for their own PPP loans
- The PPP loan does not apply to household employers (individuals who employ household employees)
- PPP loans will have an interest rate of 1% with a maturity of two years
- A business may not apply for more than one PPP loan
- The loan amount can be forgiven up to the full principal and interest amount—More guidance will be issued regarding loan forgiveness
 - Up to 75% of the loan is forgivable as it relates to money used for payroll
 - Up to 25% is forgivable as it relates to money used for non-payroll costs
- PPP loans can be used for payroll, rent, utility, and interest payments on certain other debt obligations incurred before February 15, 2020.
 - The borrower must document the proceeds used for payroll costs in order to determine the amount of forgiveness (This is why a separate bank account for loan proceeds is helpful)
- PEO or payroll providers may provide documentation to indicate the amount of wages and payroll taxes paid to the IRS by the eligible borrower

Lenders must confirm they received borrower certifications in the application form and any necessary documentation. Lenders are also permitted to use their own online systems and forms that prompt disclosure of the same information as the Borrower Application Form. For borrowers that do not have documentation, the borrower must provide supporting documents such as bank records.

The SBA will pay lenders:

- 5% percent in fees for processing PPP loans of not more than \$350,000
- 3 % for loans of more than \$350,000 and less than \$2,000,000
- 1% percent for loans of at least \$2,000,000



Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds. The total amount an agent may collect from the lender for assistance in preparing a PPP application, including referral, may not exceed:

- 1 % for loans not more than \$350,000
- .5 % for loans of more than \$350,000 and less than \$2,000,000
- .25% for loans of at least \$2 million

If a franchise brand is listed on the SBA directory each of its franchisees that meets the applicable size standard can apply for a PPP loan:

- The franchisor does not apply on behalf of its franchisees
- The \$10 million PPP loan cap is a per franchisee limit
- If a franchise brand is not listed on the SBA directory it may request listing—SBA will not apply affiliation rules to franchise brands requesting listing to participate in the PPP

If any ownership interest of 20% or greater in the applicant business belongs to a business or other legal entity, lenders will need to collect appropriate beneficial ownership information for that entity.

If you have any questions, please contact

Steven J. Kuperschmid
516-663-6686
skuperschmid@rmfpc.com

Allison Castel
516-663-6682
acastel@rmfpc.com