

The Paycheck Protection Program (PPP) under the recently enacted CARES Act has been getting a lot of attention. The goal of the PPP is to provide financial assistance so that small businesses will keep their employees on their payroll for the next two months. In a nutshell, the PPP authorizes eligible small businesses and independent contractors/sole proprietors to receive forgivable loans for up to 2.5 times the amount of an entity's average monthly "payroll costs." The PPP is moving very quickly with a fair amount of confusion and some ambiguous guidance. Entities that want to take advantage of the PPP should consider the following:

**Who can Apply** – In general, entities with 500 or fewer employees taking into consideration SBA's affiliation rules, including independent contractors/sole proprietors, who have not been debarred from federal programs, presently involved in bankruptcy, or has defaulted on an SBA loan in the last 7 years. In addition, among other things, the entity must certify in good faith that the current economic uncertainty makes the loan necessary to support ongoing operations of the applicant.

**Where to Apply** – The PPP loans are administered by banks under SBA rules. While it is not mandatory, the bank with whom your small business has a working relationship will likely be your best option. The terms of all PPP loans are the same, so you should be looking for the bank that will provide you with prompt attention.

**When to Apply** – As soon as possible. The PPP opened up for small businesses on April 3<sup>rd</sup> and will open up for independent contractors/sole proprietors on April 10<sup>th</sup>. The SBA has stated that the loans will be provided on a "first come, first serve" basis, but it is not clear how that will be applied. The PPP was initially funded for \$349 billion, which is a lot of money but the media is reporting that it may be depleted quickly. The media is also reporting that Congress may authorize another \$250 billion for PPP, but that has not happened yet.

**How to Apply** – The SBA has provided a standard application form, which is not complicated on its face. However, the rules for calculating the average monthly payroll costs (which is used to calculate the loan amount) can be confusing. Since you must make certain certifications as part of the application, you should exercise due care in completing the form.

In addition to the application, your bank will likely require supporting documentation to establish the requested loan amount (e.g., payroll records for 2019) and information about whether the entity's owner(s) also own other businesses.

**Terms of the Loan** – The loan is a 2-year loan with an interest rate of 1 percent. The loan proceeds must be used to cover payroll costs, continuation of fringe benefits, certain interest payments, rent, and utilities. The entire loan amount is potentially forgivable if you take certain actions during the 8 weeks following receipt of the loan proceeds.

**Loan Forgiveness** – The loan principal will be forgiven to the extent the entity can document that during the 8-week period following receipt of the loan proceeds that: (a) at least 75 percent of the loan proceeds was used for qualifying payroll costs; (b) any remaining amount was used for qualifying rent, interest payments, or utilities; (c) the entity maintained the same number of FTEs during the 8 week period as it had during the period January 1 to February 15; and (d) the entity did not reduce an employee's total pay by more than 25 percent. Please note that the maximum loan amount is equal to

about 75 days of last year's average payroll and the forgiveness period is only 56 days, so make appropriate payroll plans for the covered period to maximize the amount of loan forgiveness.

**Independent Contractors / Sole Proprietors** – The CARES Act the implementing Interim Final Rule appear to be geared towards small businesses that pay employees. As PPP opens up to independent contractors / sole proprietors, SBA should come out with better guidance because applying the rules for paying companies paying employees to independent contractors / sole proprietors that receive their compensation from 3<sup>rd</sup> parties is like trying to fit a square peg in a round hole.