

CARES Act and Impact

April 13, 2020



DAVILA ADVISORY

Objectives

- Paycheck Protection Plan and Economic Injury Disaster Loans
- Employee Retention Credit
- Pandemic Unemployment Assistance
- Families First Coronavirus Response Act (FFCRA)
- Quick Hit: Tax Changes



Paycheck Protection Plan and Economic Injury Disaster Loan



Paycheck Protection Plan

- PPP provides \$349 billion in forgivable loans (both principal and interest) to cover payroll costs and other expenses
- Purpose is to help small business employers **maintain high employment** by offering loans through the SBA



PPP – Terms of the Loan

- Terms the same for all borrowers:
 - 2-year loan (no prepayment penalties) at 1%
 - No collateral required and no personal guarantees are required
 - Payments are deferred for six months but interest continues to accrue
 - Applicant can only take out one loan from the PPP
 - 100% forgivable loan

PPP – Who is Eligible?

- Generally any business (including ASCs) with fewer than 500 employees
 - Overrides SBA size standard of \$16.5 million in revenue for ASCs
- Business must have been in operation on or before 2/15/2020 and had either:
 - Employees for whom the business paid salaries
 - Paid independent contractors, as reported on 1099-MISC
- Sole proprietorship and independent contractors are eligible

PPP – How to Apply

- Loans are obtained through local SBA lenders by filling out Form 2483
- Potential borrowers should contact their local lenders to determine additional documentation requirements
 - Payroll processing records, payroll tax filings, 1099-MISC, etc.
- Small business can apply starting **4/3/2020**
- Independent Contractors and Self-Employed can apply starting on **4/10/2020**

PPP – Maximum Loan Amount

- Loan is lesser of
 - Average eligible monthly payroll multiplied by 2.5; or
 - \$10 million
- Payroll Costs Include
 - Amounts paid to employees for salary, wages, commissions, or similar compensation, PTO, medical leave, severance, group health benefits (including insurance), retirement benefits
 - *Max \$100k per employee*
 - *Employee must live in the United States*
 - Amounts paid for state or local taxes on employee compensation

PPP – Compensation of Business Owners

- Corporations (1120 or 1120S)
 - Only include shareholder W-2 wages
 - Distributions/Dividends are considered returns on investment and not payroll costs
- Partnerships (1065)
 - Partners that receive W-2s, if applicable
 - Guaranteed payments and distributive share of income -- *Maybe*
- Self-Employed and Independent Contractors (Schedule C)
 - Income such as wage, commission, income, net earnings from self-employment or similar compensation

PPP - Examples

- Example 1 – No employees make more than \$100,000
 - Annual payroll: \$120,000
 - Average monthly payroll: \$10,000
 - Multiply by 2.5 = \$25,000
 - Maximum loan amount is \$25,000
- Example 2 – Some employees make more than \$100,000
 - Annual payroll: \$1,500,000
 - Subtract compensation amounts in excess of an annual salary of \$100,000: \$1,200,000
 - Average monthly qualifying payroll: \$100,000
 - Multiply by 2.5 = \$250,000
 - Maximum loan amount is \$250,000



PPP - Loan Calculator

- <https://www.aicpa.org/interestareas/privatecompaniespracticesection/qualityservicesdelivery/sba-paycheck-protection-program-resources-for-cpas.html>

PPP payroll calculators for loan application

The PPP provides three scenarios for calculating maximum loan amounts depending on how long the business has been in operation and whether it's seasonal. You can add all three to your COVID-19 resource library. They're designed so that your client can complete them following the steps outlined in the calculator.

- **PPP Loan Calculator – Non-seasonal & In business 2/15/19 – 6/30/19**
This calculator will apply for most businesses that operated in 2019.
- **PPP Loan Calculator – Nonseasonal & NOT in business 2/15/19 – 6/30/19**
This calculator will apply for new businesses.
- **PPP Loan Calculator – Seasonal business**
This calculator will apply for clients that don't operate year-round.

PPP – Allowable Uses of Funds

- Payroll Costs (must make up at least 75% of the PPP loan proceeds)
 - Salaries, wages, or commissions, or tips (capped at \$100k on an annualized basis for each employee)
 - Employee benefits costs for vacation, parental, family, medical or sick leave; allowance for separation or dismissal; group health care coverage, including insurance premiums; and payment of any retirement benefit
- Other Costs
 - Mortgage interest, rent, utilities, interest for debt acquired before 2/15/2020 and refinance of SBA economic injury disaster loan



PPP – NOT Considered Payroll Costs

- Any compensation of an employee whose principal place of residence is outside of the U.S.
- Compensation of an individual employee in excess of annual salary of \$100k
- Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees
- Qualified sick and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act (FFCRA)
- **Payments to independent contractors**

PPP – Loan Forgiveness

- Loan and interest will be forgiven if:
 - Loan proceeds are used to cover payroll costs and most mortgage interest (not principal), rent, and utility costs over an eight-week period
 - Number of employees and their pay levels are maintained
- No more than 25% of the total loan balance forgiven may be for non-payroll costs
- 75% of proceeds **must** be used to cover payroll costs
- Tax free loan forgiveness of both principal and interest

PPP – Maintenance of Payroll

- Loan forgiveness will be reduced if there is a decrease of full-time employment headcount or decrease in salaries and wages by more than 25% for any employee that made less than \$100k
- Reductions between 2/15/2020 and 4/26/2020 can be “cured” by 6/30/2020
- Does not have to be same employees – can be equivalent employees



Economic Injury Disaster Loan (EIDL)

- CARES Act allowed for an emergency advance of up \$10,000 that will not have to be repaid
- Existing SBA Loan Program used for business in disaster areas
 - President Trump declared the US a disaster area on March 13, 2020
 - Loans up to \$2 million @ 3.75% that extend a maximum 30 years but determined on a case by case basis
 - Eligibility requirements consistent with PPP Loans
- If used for payroll expenses – advance is refinanced into PPP loan
- If not used for payroll expenses – advance does not affect PPP loan

EIDL w/ PPP Loan examples

- Example 3 – No employees make more than \$100,000, outstanding EIDL loan of \$10,000.
 - Annual payroll: \$120,000
 - Average monthly payroll: \$10,000
 - Multiply by 2.5 = \$25,000
 - Add EIDL loan of \$10,000 = \$35,000
 - Maximum loan amount is \$35,000
- Example 4 – Some employees make more than \$100,000, outstanding EIDL loan of \$10,000
 - Annual payroll: \$1,500,000
 - Subtract compensation amounts in excess of an annual salary of \$100,000: \$1,200,000
 - Average monthly qualifying payroll: \$100,000
 - Multiply by 2.5 = \$250,000
 - Add EIDL loan of \$10,000 = \$260,000
 - Maximum loan amount is \$260,000

Employee Retention Credit



Employee Retention Credit

- Fully refundable tax credit for employers equal to 50% of qualified wages
- Qualified wages are paid by an employer between 3/13/2020 and 12/31/2020
- The maximum credit for an employer is \$5,000 per employee for the year



Employee Retention Credit - Eligibility

- Employers that carry on during the 2020 calendar year that either:
 - Fully or partially suspends operations during any calendar quarter in 2020 due to restrictions imposed by appropriate governmental authority
 - Experiences a significant decline in gross receipts (less than 50% of gross receipts of the same calendar quarter in 2019)
- Self-employed individuals are not eligible
- Not eligible if obtained PPP loan

Employee Retention Credit – How to get it

- Employee retention credit is allowed against employer portion of taxes and you can get it by reducing federal employment tax deposits
- Employer can fund the qualified wages by accessing federal employment taxes (including those withheld)
- Use Form 7200 to get an advance on refundable portion, if necessary



Pandemic Unemployment Assistance



Pandemic Unemployment Assistance

- CARES Act included a provision that allows individuals who are not yet eligible for state unemployment benefits, but are unable to work due to COVID-19, to receive benefits fully funded by the federal government
- Federal unemployment benefits consist of
 - \$600/wk supplement to state benefits to those who already qualify
 - \$600/wk supplement to the state unemployment rate for unemployed workers who would not normally be eligible
 - Extends unemployment benefits 13 weeks beyond the state's current law



Pandemic Unemployment Assistance

- Self-employed individuals and independent contractors are eligible
 - Administered at the state level so benefits will vary widely
 - Check with the state unemployment commission
- Employees who can telework with pay or receive sick or other paid-leave benefit are ineligible for this benefit



Families First Coronavirus Response Act (FFCRA)



FFCRA

- Became law 3/18/2020
- Families First Coronavirus Response Act
 - The Emergency Paid Sick Leave Act (EPSLA)
 - 80hrs full pay sick leave (up to \$511/day) for affected employee
 - 80hrs 2/3 pay sick leave (up to \$200/day) if family member directly affected
 - The Emergency Family and Medical Leave Expansion Act (EFMLEA)
 - Employers required to provide 12 weeks leave for qualifying need related to COVID-19 at 2/3 of employee's rate
- Employer receives 100% refundable tax credit
- Paid leave provisions are effective on 4/1/2020 and applies to leave taken from 4/1/2020 to 12/31/2020



Quick Hit: Tax Changes



Tax Changes

- \$1,200 credit/rebate
- Waiver of 10% tax on premature distributions from IRAs and qualified plans
- Waiver of RMDs for 2020
- \$300 above the line charitable deduction for taxpayers that take the standard deduction
- \$5,250 exclusion of employer education assistance can now be used to pay student debt
- Bonus depreciation technical correction for qualified improvement property



Resources

Resources

- SBA
 - Website
 - <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
 - Interim Final Rule: Business Loan Program Temporary Changes
 - <https://content.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL.pdf>
- Treasury
 - PPP FAQs
 - <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>
- Employee Retention Credit
 - IRS FAQs
 - <https://www.irs.gov/newsroom/faqs-employee-retention-credit-underthe-cares-act>

Thank you!

Please feel free to contact me with any questions:
julio@davilaadvisory.com