

## Updates as of 4/3/20

### Borrower Application

The application does not have many significant changes; however, we listed our observations below:

- Applicants must now indicate their entity classification (partnership, corporation, etc.)
- The application now includes a reminder that applicants they can refinance Economic Injury Disaster Loans (EIDLs) into their PPP loans.
- Question #5, which asks about previous criminal charges, was expanded to include 20% owners; however, we note that this detail was included in the instructions to the original application.
- The look-back period for felonies in Question #6 was reduced from 7 years in the original application to 5 years.
- Question #7 had the most significant change going from "*I am a U.S. Citizen OR I have Lawful Permanent Resident Status*" to "*Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation?*" This basically serves as a reminder wages and benefits paid to employees abroad cannot be included in payroll costs for purposes of determining the loan amount.
- Question #8 was added to remind certain franchise applicants they may be eligible for the loan.
- The *Certifications and Authorizations* and *Certifications* sections on page 2 of the application were expanded and refined. *Applicants should review this information with legal counsel.*
- Finally, the instructions were refined by adding the definition of *Payroll Costs* and providing instructions for those refinancing an EIDL loan.

### Regulations

The Treasury regulations attempted to answer and clarify various outstanding issues. We found the following items important to point out:

1. If you would normally be ineligible for an SBA loan, you are not eligible for the PPP loan. The regulations define what businesses are not eligible for the PPP as those identified in [13 CFR 120.110](#) except for the nonprofit organizations specifically identified in the law (501(c)(3) charities, 501(c)(19) veterans organizations and tribal business concerns in 31(b)(2)(C) of the Small Business Act).
2. For independent contractors and sole proprietorships without employees that are applying for PPP loans, the *Payroll Costs* used to determine the loan amount are the sole proprietor or independent contractor's net earnings from self-employment.

3. For businesses with employees, payments to subcontractors normally reported on Form 1099-MISC are ***excluded*** from *Payroll Costs*. **This was a major open question that seems to have finally been answered. The regulations specifically state independent contractors can apply for a PPP loan (as outlined in #2 above) and are thus excluded from *Payroll Costs*.**
4. For non-profit organizations without employees, the regulations indicate that independent contractors do not count as employees for purposes of calculating the loan base. The independent contractors will have to apply for the PPP loan independently based upon their net earnings from self-employment as noted in #2 above.
5. The interest rate on PPP loans was changed from 0.5% to 1%.
6. Forgiveness for mortgage interest, rent and utilities meeting certain requirements is limited to 25% of the total amount of loan forgiveness - payroll costs must account for at least 75% of loan forgiveness.
7. If the loan proceeds are used for unauthorized purposes, the SBA will require repayment of the amounts. If an applicant, or the owners, knowingly use the funds for unauthorized purposes, they will be subject to additional liability such as charges for fraud and the SBA will have recourse against them for the unauthorized use.

### **Continued Confusion**

The following items continue to be a source of confusion and should be discussed with your lender as you apply:

1. The regulations under Step 1 of "*How do I calculate the maximum amount I can borrow?*", indicate the applicant aggregates payroll costs from the ***last twelve months***. However, under "*What do lenders have to do in terms of loan underwriting?*", the regulations instruct lenders to confirm the Payroll Costs for the preceding ***calendar year***. This was and remains an open question and source of confusion for those trying to calculate their maximum eligible PPP loans.
2. The law indicates PPP loan principal is eligible for forgiveness and interest could be deferred but would eventually be payable by the borrower. The regulations, under "*Can my PPP loan be forgiven in whole or in part?*" indicate loan forgiveness can be up to the full principal amount of the loan *and any accrued interest*. You should seek clarity on this aspect from your lender.