

CARES Act and Paycheck Protection Program update

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Since the passage of the [Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#) and the [Paycheck Protection Program \(PPP\)](#), which provides up to \$349 billion in financial assistance to businesses affected by the 2019 novel coronavirus (COVID-19) pandemic, businesses have been eagerly awaiting further guidance from the U.S. Small Business Administration (SBA) regarding the application process.

Over the past week, SBA and the U.S. Department of the Treasury have issued the following additional guidance:

- It is anticipated that businesses and sole proprietors will be able to apply starting April 3, 2020. Self-employed individuals and independent contractors may start applying April 10, 2020. Applications must be submitted to participating banks and lenders. You should contact your local lender now to determine if they are participating.
- On March 31, 2020, SBA released an [application form](#). Godfrey & Kahn attorneys expect applications will be submitted through an online portal. Contact your lender for further details.
- Lenders will need to verify that:
 - The business was in operation on Feb. 15, 2020;
 - The business had employees for whom it paid salaries and payroll taxes; and
 - The dollar amount of average monthly payroll costs for 2019.
- While the above list is subject to change based on final SBA guidance and lender-specific requirements, businesses should plan to prepare the following:
 - A payroll statement showing active payment of salaries and payroll tax on Feb. 15, 2020;
 - A 2019 year-end (12-month) payroll statement from your payroll processor, showing additional information that identifies employees receiving a salary greater than \$100,000;
 - IRS Form 941 (quarterly form that lists number of employees and wages);
 - IRS Form 944 (annual form that lists number of employees and wages);
 - IRS Forms 1099 (if you are an independent contractor);
 - Articles of incorporation and/or organization;
 - Bylaws and/or operating agreement; and
 - Wire instructions on where to send the loan proceeds at funding

The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

- The loan terms will be the same for everyone. These terms include the following:
 - An interest rate of 0.5 percent;
 - A maturity of two years;
 - Payment deferral for six months (interest will accrue during this period);
 - No prepayment penalty;
 - No collateral or personal guarantees; and
 - No borrower or lender fees payable to SBA.
- Under the PPP, the loans are subject to forgiveness when used for payroll costs, mortgage interest payment, rent and utilities. Due to likely high subscription, at least 75 percent of the forgiven amount must have been used for payroll costs.
- SBA will likely issue further guidance in the form of an interim rule that will, among other things, make clear:
 - Exactly what a borrower must attest to;
 - What supporting documentation will be required;
 - Banker responsibilities for verification; and
 - Acceptable forms of borrower signatures, e.g. electronic, DocuSign, scanned copies, etc.

SBA has not issued further guidance regarding the application of the affiliation rules. Godfrey & Kahn attorneys are waiting to see if further guidance will be issued clarifying these rules for purposes of the PPP.

If you have questions about the Paycheck Protection Program, contact Jennifer Wolff, John McDonald or Kristin Roeper with any questions.