



# COVID-19: CARES Act & Employer Funding Solutions

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## Speakers



**Jonathan M. Calla**  
Corporate, Private Equity  
and Venture Capital  
jcalla@nutter.com  
617.439.2096



**Natalie Cappellazzo**  
Labor, Employment  
and Benefits  
ncappellazzo@nutter.com  
617.439.2390



**Shannon S. Zollo**  
Chair, M&A Practice Group  
szollo@nutter.com  
617.439.2095

# Coronavirus Aid, Relief, and Economic Security Act (CARES Act) & Paycheck Protection Program (PPP)

## Program Agenda

1. Paycheck Protection Program
2. Eligibility Requirements
3. Loan Terms, Use of Proceeds & Forgiveness
4. Application Process (WHAT TO DO TODAY)
5. Employment
6. Other Emergency Funding Options

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## Paycheck Protection Program (PPP)

- \$349 billion for loans to small businesses.
- Small Business Association (SBA) administered.
- PPP Loans up to \$10 million are guaranteed by SBA.
- Underwriting eligibility more relaxed than existing SBA programs.

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## Eligibility Requirements

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- Eligible Borrowers:

- Established business operations as of 2/15/20.
- 500 or fewer employees (includes full-time/part-time/other status).
- “Gig Economy Workers” (sole proprietors, 1099, self-employed).
- Exceptions for Accommodation/Food Services sectors.

## Eligibility Requirements

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- Evidence that business was operational on/prior to 2/15/20 and paid employee & payroll taxes; and
- Good Faith Certification:
  - i. loan is necessary for operations due to COVID-19;
  - ii. funds will be used to satisfy payroll costs; and
  - iii. no pending SBA loan application.
- Initial guidance provided by SBA and additional guidance expected.

## Eligibility Requirements



- PE/VC Portfolio Companies:
  - Eligible companies must be considered a “small business” by SBA.
  - The size test under SBA’s Aggregation Rules may require certain controlled interest portfolio companies to be combined for purposes of determining eligibility.
  - Waived for Accommodation/Food Services Sectors and Franchises.
  - **Bottom line: major obstacle being addressed by PE/VC lobby with intention of seeking (i) waiver, or (ii) elimination of Aggregation Rules.**
  - In the interim, proceed as if eligible as status may change.

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## Loan Terms, Use of Proceeds & Forgiveness



- Loan Terms:
  - Loan Amount: Lesser of
    - i. 2.5x the average monthly payroll costs over prior 12 month period; or
    - ii. \$10 Million - payroll costs excludes annual compensation in excess of \$100K.
  - Interest Rate: 0.5% interest rate.
  - Term: 2 year maximum term.
  - Deferred Payments: All payments are deferred for 6 months.
  - NO STOCK BUYBACKS, DIVIDENDS, FORGIVENESS OR LAYOFFS.

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## Loan Terms, Use of Proceeds & Forgiveness

- Loan Amount & Payroll Costs:

- salaries, wages, commissions or similar compensation
- cash tips or their equivalent
- severance
- group health care benefits, including insurance premiums
- covered leave and retirement benefits
- other expenses, including payments of state or local taxes assessed on employee compensation
- Exclusions; (i) compensation in excess of \$100,000, (ii) employees outside of the US and (iii) amounts recovered under the *Families First Coronavirus Response Act*.

## Loan Terms, Use of Proceeds & Forgiveness

- Use of Proceeds:

- Salaries, commissions, and payroll administrative costs;
- Group health care benefits for paid sick, medical, or family leave, and insurance premiums;
- Mortgage interest payments (not prepayment/payment of principal);
- Rent/lease payments;
- Utilities; and
- Interest on pre 2/15/20 debt (not prepayment/payment of principal).

## Loan Terms, Use of Proceeds & Forgiveness *Nutter*

- Loan Forgiveness:
  - For businesses that (i) retain, or (ii) rehire laid off workers.
  - For payroll incurred during 8 week period starting on loan date.
  - Not treated as gross income for tax purposes.
- Federal grant to companies that retain/rehire laid off workers.

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## Loan Terms, Use of Proceeds & Forgiveness *Nutter*

- Potential negative adjustments to forgiveness
  - Employee headcount (full-time employees).
  - Compensation adjustments.
- Borrower would apply for forgiveness to the SBA lender that makes the PPP loan.
- The CARES Act requires lender to make a decision on loan forgiveness within 60 days after lender receives a complete application for loan forgiveness.

## Employment

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- Pandemic Unemployment Benefits available to individuals out of work due to nearly any reason attributable to pandemic.
  - CARES Act allocates \$250 billion for unemployment benefits
  - Includes self-employed, those seeking part-time employment, with insufficient work history, or otherwise wouldn't qualify for benefits
- Extends regular weekly benefits for up to 39 weeks between January 27, 2020 and December 31, 2020.
  - MA benefits are usually about 50% of average weekly wage
- Workers eligible for additional \$600 weekly benefit payable until July 31, 2020.

## Application Process (WHAT TO DO TODAY)

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- **RUN – DON'T WALK - to SBA lender - contact immediately.**
- If lender not SBA authorized, seek SBA authorized relationship.
- Complete and submit the SBA Loan Applicable Form.
- Once outstanding SBA guarantees hit \$349 billion, a small business not already approved for a PPP loan will not obtain funding unless Congress expands program.

## Application Process (WHAT TO DO TODAY)



- Borrower Information Required to Complete Application:
  - Employee schedule confirming no more than 500 employees.
  - Average monthly “payroll costs” analysis for past 12 months.
  - Worksheet demonstrating requested PPP loan does not exceed maximum loan limit (2.5x average monthly payroll).
  - A ‘19 profit and loss statement (P&L), only if available.

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## Other Emergency Funding Options



- SBA-administered Economic Injury Disaster Loan Program (EIDL Program).
- Small and Midsized Businesses under the CARES Act:
  - Section 13(3) Programs and Facilities.
  - Main Street Lending Program
  - Mid-sized Business Program (500 to 10,000 employees)



# QUESTIONS?



# Can Portfolio Companies of Private Equity and Venture Capital Funds Take Advantage of COVID-Related Stimulus Programs?

03.30.2020 | Legal Advisory

In response to the overwhelming domestic and global economic impact of the COVID-19 pandemic, Congress recently enacted legislation to provide relief to small businesses across the United States.

## **The Economic Injury Disaster Loan Program and the Paycheck Protection Program**

Each of the Coronavirus Preparedness and Response Supplemental Appropriations Act (providing small businesses with relief under the Economic Injury Disaster Loan Program (EIDL)) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (providing small businesses with relief under the Paycheck Protection Program (PPP)) are means by which businesses can access capital to alleviate the immediate economic effect of COVID-19.

Each of the EIDL and PPP are programs administered by the Small Business Administration (SBA), with eligibility requirements under each program that a business qualify as a “small business” under existing SBA rules.

**EIDL.** Eligible businesses under the EIDL may receive up to \$2 million in loans (at interest rates of 3.75% per annum) to use for working capital and ordinary course expenditures (with loan amounts being limited to the economic injury sustained by the business from COVID-19). Please see a recent Nutter advisory as to the EIDL program.

**PPP.** A major focus of the CARES Act is geared toward providing financial assistance to help businesses keep workers on the payroll during the physical and economic shutdown. The CARES Act includes the financial assistance in the form of a \$349 billion federally guaranteed loan program, that will provide eligible entities with loans to cover the costs of payroll, health care benefits, mortgage interest, rent, utilities, and certain other obligations. The maximum amount of each loan is \$10 million, with the actual permitted amount tied to the borrower’s payroll costs (and effectively limited to 2.5x the average monthly payroll incurred over the one-year period prior to the loan, with exceptions for seasonality and limitations on certain highly-compensated employees). When paired with an eight-week loan

## **Attorneys**

Jonathan M. Calla  
Kelly L. Dutremble  
Joshua E. French  
Joshua A. Gray  
Kate Henry  
Meghan E. Kelly  
Shannon S. Zollo

## **Practice Areas**

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Real Estate

## Can Portfolio Companies of Private Equity and Venture Capital Funds Take Advantage of COVID-Related Stimulus Programs?

forgiveness program, the PPP will effectively serve as a federal grant to eligible entities to keep employees on the payroll (or rehire employees that were recently laid off). The loans also contain certain requirements: no stock buybacks, no dividends, no forgiveness, and no large layoffs. Please see a recent Nutter advisory as to the PPP program.

### **EIDL and PPP Eligibility of PE/VC Portfolio Companies**

#### **Determination of a Small Business**

Eligibility to receive a loan under either program requires a business to be considered a “small business” by the SBA.

- Generally speaking, one is considered to be a small business if it has fewer than 500 employees, although there are some exceptions which are more specifically described in our earlier advisory linked above.
- However, the applicant business will also be aggregated with “*affiliates*” which may result in employees of other companies (which may have no connection to the applicant business, other than a common investor) being deemed to be part of the applicant.
- In short, while a business might on first blush meet the EIDL or PPP eligibility requirements, the question of whether the business is an “affiliate” of another business should be considered closely, particularly when the business has PE/VC funds as shareholders.

#### **Determination of an Affiliate**

An affiliate relationship exists if a party has actual control or the power to control certain actions of another. For example, a company that is majority-owned by an investor is an affiliate of that investor. If the investor has majority control over other companies, those other companies are part of the affiliate family. In that instance, all of the employees within the affiliate family would be deemed to be part of an applicant business to determine eligibility under the SBA’s programs.

Control is not solely based on majority ownership, unfortunately. The determination of control is fact-based and may exist if a stockholder has the ability to control or block certain actions that are part of the standard operations of the business. Based on existing case law, the SBA has deemed certain standard venture capital negative covenants requiring the approval of a named investor or their board designee such as approving capital expenditures outside of a company’s budget, hiring or firing executives or changing such executive’s compensation, and making or declaring dividends to be sufficient levels of control to deem an investor an affiliate. By contrast, certain extraordinary actions, such as an investor having the ability to approve a sale of the company, are not deemed to create a controlling interest.

Exceptions to the affiliation rules apply in limited scenarios under the PPP with respect to the accommodation and food services sector and franchises.

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Can Portfolio Companies of Private Equity and Venture Capital Funds Take Advantage of COVID-Related Stimulus Programs?

**PE/VC Portfolio Company Recommendations.**

The small business size test in concert with the SBA aggregation rules may require a portfolio company's size to be considered with ALL other portfolio companies held by its lead investors (which may also include portfolio companies of earlier or later funds). This presents eligibility challenges for portfolio companies of PE/VC funds, and accordingly, we recommend an assessment of portfolio companies in light of the EIDL and PPP programs and the SBA size of the business and aggregation rules.

While it is possible that additional legislation will be passed to tighten affiliate rules or that the SBA will enact a regulatory fix in implementing the CARES Act, portfolio companies (and their PE/VC sponsors) should closely review their governing documents to determine what level of control is held by certain stockholders of the company and consider whether to amend certain rights which may create a barrier to eligibility for the PPP or EIDL.

**This advisory was prepared by Jonathan Calla, Kelly Dutremble, Joshua French, Joshua Gray, Kate Henry, Meghan Kelly, and Shannon Zollo in Nutter's Private Equity practice group. For more information, please contact any of the above individuals; or your Nutter attorney at 617.439.2000.**

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# CARES Act Paycheck Protection Program

03.28.2020 | Legal Advisory

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. A core component of the CARES Act is the provision of approximately \$350 billion to guarantee loans to small businesses. The program, called the Paycheck Protection Program (PPP), is an expanded Small Business Administration (SBA) loan program. The loans will be made by banks, credit unions, and other lenders and are fully guaranteed by the SBA. Below are some FAQs which describe the PPP for prospective borrowers.

## **Who is eligible for PPP loans?**

Under the CARES Act, eligible borrowers include any business concern, nonprofit organization, veterans organization, or Tribal business that employs not more than the *greater of*:

- 500 employees; or
- if applicable, the size standard in number of employees established by the SBA for the industry in which the entity operates.

For purposes of determining the number of employees, the term employee includes individuals employed on a full-time, part-time, or other basis.

Eligible borrowers also include sole proprietors, independent contractors, and self-employed individuals, such as “gig economy” workers.

For eligible borrowers in the food services and accommodation sectors with a North American Industry Classification System code beginning with 72, the 500-employee limit is applied to each physical location and not the company. As a result, a restaurant or hotelier with 1,000 employees and 10 locations would be eligible for PPP loans at each location that has less than 500 employees.

Finally, eligible borrowers must have been in business on February 15, 2020.

***For affiliated entities (e.g., entities under common control), is the total number of employees calculated on an entity-by-entity basis or are all employees aggregated across all affiliates?***

## **Attorneys**

Jason J. Cabral  
Thomas J. Curry  
Matthew P. Doring  
Joshua E. French  
Michael K. Krebs  
Terence A. McGinnis  
Melissa Sampson McMorrow  
Beth H. Mitchell  
Michael E. Mooney  
David S. Rubin  
Erin E. Whitney

## **Practice Areas**

Commercial and Real Estate Finance  
Corporate and Transactions  
Labor, Employment and Benefits  
Tax  
Tax Advisory Services

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## CARES Act Paycheck Protection Program

The SBA has complex affiliation rules that generally require businesses under common control or otherwise affiliated to aggregate their number of employees for purposes of determining whether the business satisfies the size standard in number of employees established by the SBA for the industry in which the entity operates. The CARES Act waives the application of the affiliation rules with respect to eligibility for a PPP loan for:

- any entity in the food services and accommodation sectors with not more than 500 employees that, as of the date on which the PPP loan is made, is assigned a North American Industry Classification System code beginning with 72;
- any entity operating as a franchise that is assigned a franchise identifier code by the SBA; and
- any entity that receives financial assistance from a company licensed under Section 301 of the Small Business Investment Act of 1958.

The affiliation rules are not waived for any other entities seeking a PPP loan. As noted above, for purposes of determining the number of employees, the term employee includes individuals employed on a full-time, part-time, or other basis.

### ***What kind of credit profile does a prospective borrower need to borrow?***

The main underwriting standards for eligibility will be significantly relaxed compared to SBA loan programs already in effect when Congress approved the CARES Act. Those existing SBA loan programs require lenders to determine repayment ability, require a personal guarantee and collateral, and require the borrower to certify it cannot obtain credit elsewhere. PPP loans will not be subject to the same requirements. Instead, the main underwriting standards for eligibility for PPP loans will be proof that the business was operational on February 15, 2020 and had employees for whom the business paid salaries and payroll taxes (or a paid independent contractor), plus the certification described below. Lenders expect the SBA will release guidance in the coming days regarding underwriting and application criteria.

The CARES Act requires eligible borrowers to make a good faith certification:

- that the loan is necessary due to the uncertainty of current economic conditions caused by the global COVID-19 pandemic to support the borrower's ongoing operations;
- acknowledging that the funds will be used to retain workers and maintain payroll or make mortgage, lease and utility payments; and
- that the borrower does not have an application pending for a loan under another SBA program for the same use and has not received such a loan.

### ***How long will it take to get the money?***

Lenders expect it could take up to two weeks after a complete application is submitted, but this period may be reduced as eligible lenders become more efficient in processing PPP loans and additional guidance is issued by the SBA.

***How much money can an eligible borrower apply for?***

The maximum PPP loan is equivalent to 250% of the employer's average monthly payroll costs during the one-year period before the loan is made or \$10 million, whichever is less.

With respect to employees, payroll costs are broadly defined to include salaries, wages, commissions or similar compensation, cash tips or their equivalent, severance, group health care benefits, including insurance premiums, covered leave, retirement benefits, and other expenses, including payments of state or local taxes assessed on employee compensation. With respect to sole proprietors or independent contractors, payroll costs are defined to include their net income from a business up to \$100,000 (pro-rated for the relevant period).

There are certain exclusions from the definition of payroll costs, including:

- the compensation of any individual employee in excess of an annual salary of \$100,000 (pro-rated for the relevant period);
- certain federal payroll taxes and income tax withholdings on wages;
- any compensation of an employee whose principal place of residence is outside of the United States; and
- qualified sick or family leave wages for which a credit is available under the Families First Coronavirus Response Act.

***Will an eligible borrower be required to pay an origination fee?***

No. The typical SBA borrower and lender fees will be waived.

***What are the repayment terms?***

The CARES Act sets the maximum interest rate for PPP loans at 4% and allows borrowers to defer payments (including principal, interest and fees) for at least six months and possibly up to one year, depending on SBA regulations to be adopted. Loans only begin to mature after the date on which the borrower applies for loan forgiveness and can have a maximum term of ten years. There are no prepayment penalties.

***Can any portion of the loan be forgiven?***

The CARES Act provides for loan forgiveness for businesses that retain employees or rehire laid-off employees. Subject to certain conditions, businesses will be eligible for forgiveness up to the amount of payroll costs and certain mortgage, rent, and utilities payments that are incurred during an eight-week period starting on the loan origination date. The CARES Act provides relief from the penalties arising under the loan forgiveness program resulting from a reduction in the workforce for those employers that rehire laid-off employees and/or raise previously lowered wages and salaries. Under the CARES Act, forgiveness will be reduced proportionately by any reduction in employees or by any reduction in pay of any employee beyond 25% of their compensation for the prior year. The amount forgiven may not exceed the loan's principal. The amount of debt forgiven will not be considered gross income for federal tax purposes.

***For what purposes can an eligible borrower use the loan proceeds?***

The CARES Act specifies the allowable uses of the proceeds of a PPP loan include:

- payroll costs;
- costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- employee salaries, commissions, or similar compensation;
- payments of interest on any mortgage obligation (which may not include any prepayment or payment of principal);
- rent, including rent under a lease;
- utilities; and
- interest on any other debt obligations that were incurred prior to February 15, 2020 (which may not include any prepayment or payment of principal).

***Is a prospective borrower still eligible to apply for a PPP loan if it has laid off employees and/or shut down operations/facilities?***

Yes.

***What steps can a prospective borrower take to best position the borrower to obtain a PPP loan?***

We recommend that you contact your current bank or credit union as soon as possible.

The CARES Act authorizes the SBA to guarantee up to \$349 billion, including loans under existing SBA lending programs. A lender will fund a PPP loan only if it first confirms the SBA will guarantee it. Assume that the SBA will confirm guarantees on a first-come, first-served basis. Once the outstanding SBA guarantees hit \$349 billion, a small business not already approved for a PPP loan will not be able to obtain funding unless Congress expands the program. At this time, it is not certain that Congress will expand the PPP or other SBA programs.

A small business should contact its existing bank ASAP to confirm that the bank is planning to offer PPP loans. Some banks are planning to give priority to existing customers and will likely make PPP loans to a business that is not an existing customer only if that borrower's current bank is not participating in the PPP. If a prospective borrower's existing bank will not be participating in the PPP, we recommend that the prospective borrower next contact a bank in the area that is an SBA preferred lender.

A small business seeking to obtain a PPP loan should have the following documents ready:

- A schedule of employees, confirming that it does not have more than 500 employees (or, if applicable, that it does not have more than the size standard in number of employees established by the SBA for the industry in which the entity operates).



## CARES Act Paycheck Protection Program

- An analysis of average monthly “payroll costs” for the past 12 months, showing the amounts included and excluded from the definition of payroll costs. Use the 12-month period April 1, 2019 to March 31, 2020 as a starting point but be prepared to update the analysis to cover the 12-month period prior to the origination of the PPP loan. Payroll costs are defined broadly to include wages, salaries, retirement contributions, health care benefits, covered leave, and other expenses.
- A worksheet demonstrating that the requested PPP loan does not exceed the maximum loan limit for which the business is eligible. The maximum PPP loan is equivalent to 250% of the employer’s average monthly payroll costs during the one-year period before the loan is made or \$10 million, whichever is less.
- A profit and loss statement (P&L) for 2019, but only if available. If a business does not have its 2019 P&L readily available, it should not delay contacting its bank until the P&L is prepared.
- The modified version of SBA Form 1919 that the SBA is expected to prepare in the coming days.

Under the CARES Act, the SBA, along with the Treasury Department, are permitted to add additional lenders to participate in the PPP, such as small business fintech lenders and other non-bank lenders. For prospective borrowers with relationships with non-bank lenders, those borrowers should first inquire with their lender whether the lender is eligible to make PPP loans.

### ***What if a prospective borrower cannot obtain a PPP loan? What other options are available?***

There are multiple types of loans available through the SBA or SBA preferred lenders, including economic injury disaster loans (EIDL) and emergency grants. The SBA’s EIDL program is accepting applications from prospective borrowers located in Massachusetts. EIDLs are made directly by the SBA.

Small businesses, private nonprofit organizations of any size, small agricultural cooperatives, and small aquaculture enterprises that have been financially impacted as a direct result of the global COVID-19 pandemic since January 31, 2020 may qualify for EIDLs of up to \$2 million to help meet financial obligations and operating expenses which could have been met had the disaster not occurred. The interest rate is 3.75% for small businesses and 2.75% for private nonprofit organizations. The SBA offers EIDLs with long-term repayments, up to a maximum of 30 years.

The CARES Act establishes an emergency grant to allow an eligible borrower who has applied for an EIDL to request an advance on that loan, of not more than \$10,000, which the SBA must distribute within three days. If the application for an EIDL is denied, the CARES Act provides that recipients are not required to repay emergency advance funds. Emergency advance funds can be used for payroll costs, increased material costs, rent or mortgage payments, or for repaying obligations that cannot be met due to revenue losses.

The CARES Act provides a limitation on a borrower from receiving a PPP loan and an EIDL for the same purpose. It does allow an eligible borrower who has an EIDL unrelated to the global COVID-19 pandemic to apply for a PPP loan, with an option to refinance that loan into the PPP loan. The emergency EIDL grant award of up to \$10,000 would be subtracted from any amount otherwise forgiven under the PPP.

***Where can a prospective borrower go for more information?***

Loan information will be available from a variety of lenders and at SBA.gov. Please also consult our COVID-19 Task Force and Resources page for updates.

**This advisory was prepared by Jason Cabral and Michael Krebs. Assistance was provided by Tom Curry, Matthew Doring, Josh French, Terry McGinnis, Melissa Sampson McMorrow, Beth Mitchell, Michael Mooney, David Rubin, and Erin Whitney. For more information, please contact any of the above individuals; or your Nutter attorney at 617.439.2000.**

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# COVID-19 Emergency Funding Solutions

03.22.2020 | Legal Advisory

Riding the wave of the longest bull market in U.S. history, and in a growing field of available institutional capital, funding options under company-friendly terms were the norm until a few weeks ago. With the spread of the novel coronavirus (COVID-19) circumstances have dramatically changed. Consequently, with respect to funding, companies should consider the following recommendations to manage the uncertainty that will presumably exist for some period of time:

1. Companies with existing banking relationships should proactively contact their relationship manager to discuss how the pandemic is affecting their businesses and how they are managing any adverse impacts. Many banks are willing to be more flexible than they might otherwise be, particularly given the recent decreases in interest rates but keeping open lines of communication is critical.
2. Companies should utilize existing lines of credit to mitigate short-term cash-flow issues.
3. If no lines of credit exist, companies must identify other options with financial institutions.
4. Additionally, there are potential opportunities for companies to obtain disaster relief funding from the Small Business Administration (SBA):
  - The SBA's Economic Injury Disaster Loan Program (EIDL) can potentially provide small businesses financially impacted by COVID-19 loans of up to \$2 million at interest rates of 3.75% per annum (2.75% for non-profit companies).
  - The term may extend up to 30 years subject to a company's financial condition.
  - EIDLs exceeding \$25,000 will require collateral including any owned real estate.
  - Companies who receive an EIDL can use funds for working capital: (i) payment of fixed debts, (ii) payroll, and (iii) other accounts payable. But these funds cannot be used for (a) expansion/replacement of lost sales/profits, (b) refinancing debt, or (c) equity buybacks/dividends.
  - Companies can apply for an EIDL at <https://disasterloan.sba.gov/ela>.
  - Applicants aren't charged application fees nor are they required to accept an EIDL

## Attorneys

Kelly L. Dutremble  
Joshua E. French  
Portia S. Keady  
Meghan E. Kelly  
Elizabeth S. Myers  
Stephen J. Patterson  
Philip R. Rosenblatt  
Shannon S. Zollo

## Practice Areas

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Real Estate

- Companies should be cognizant of corporate governance provisions in their respective organizational documents, and any other equityholder agreements, to confirm whether accepting an EIDL requires approval from any stakeholders.

While it is not clear when things will return to “normal”, there are options available for companies that need assistance. We will continue to monitor additional programs as legislation is passed and will update accordingly. Please do not hesitate to reach out with any questions.

**This advisory was prepared by Shannon Zollo, Josh French, Phil Rosenblatt, and Steve Patterson. For more information, please contact one of the authors or your Nutter attorney at 617.439.2000.**

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## **PAYCHECK PROTECTION PROGRAM (PPP) INFORMATION SHEET: BORROWERS**

The Paycheck Protection Program (“PPP”) authorizes up to \$349 billion in forgivable loans to small businesses to pay their employees during the COVID-19 crisis. *All loan terms will be the same for everyone.*

The loan amounts will be forgiven as long as:

- The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the 8 week period after the loan is made; and
- Employee and compensation levels are maintained.

Payroll costs are capped at \$100,000 on an annualized basis for each employee. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

Loan payments will be deferred for 6 months.

### **When can I apply?**

- Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Other regulated lenders will be available to make these loans as soon as they are approved and enrolled in the program.

**Where can I apply?** You can apply through any existing SBA lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. You should consult with your local lender as to whether it is participating. Visit [www.sba.gov](http://www.sba.gov) for a list of SBA lenders.

**Who can apply?** All businesses – including nonprofits, veterans organizations, Tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors – with 500 or fewer employees can apply. Businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries (click [HERE](#) for additional detail).

For this program, the SBA’s affiliation standards are waived for small businesses (1) in the hotel and food services industries (click [HERE](#) for NAICS code 72 to confirm); or (2) that are franchises in the SBA’s Franchise Directory (click [HERE](#) to check); or (3) that receive financial assistance from small business investment companies licensed by the SBA. Additional guidance may be released as appropriate.

**What do I need to apply?** You will need to complete the Paycheck Protection Program loan application and submit the application with the required documentation to an approved lender that is available to process your application by June 30, 2020. Click [HERE](#) for the application.

**What other documents will I need to include in my application?** You will need to provide your lender with payroll documentation.

**Do I need to first look for other funds before applying to this program?** No. We are waiving the usual SBA requirement that you try to obtain some or all of the loan funds from other sources (i.e., we are waiving the Credit Elsewhere requirement).

**How long will this program last?** Although the program is open until June 30, 2020, we encourage you to apply as quickly as you can because there is a funding cap and lenders need time to process your loan.

**How many loans can I take out under this program?** Only one.

**What can I use these loans for?** You should use the proceeds from these loans on your:

- Payroll costs, including benefits;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

**What counts as payroll costs?** Payroll costs include:

- Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);
- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;
- State and local taxes assessed on compensation; and
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.

**How large can my loan be?** Loans can be for up to two months of your average monthly payroll costs from the last year plus an additional 25% of that amount. That amount is subject to a \$10 million cap. If you are a seasonal or new business, you will use different applicable time periods for your calculation. Payroll costs will be capped at \$100,000 annualized for each employee.

**How much of my loan will be forgiven?** You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

You will also owe money if you do not maintain your staff and payroll.

- Number of Staff: Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- Level of Payroll: Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019.
- Re-Hiring: You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

**How can I request loan forgiveness?** You can submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.

**What is my interest rate?** 0.50% fixed rate.

**When do I need to start paying interest on my loan?** All payments are deferred for 6 months; however, interest will continue to accrue over this period.

**When is my loan due?** In 2 years.

**Can I pay my loan earlier than 2 years?** Yes. There are no prepayment penalties or fees.

**Do I need to pledge any collateral for these loans?** No. No collateral is required.

**Do I need to personally guarantee this loan?** No. There is no personal guarantee requirement. \*\*\*However, if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges against you.\*\*\*

**What do I need to certify?** As part of your application, you need to certify in good faith that:

- Current economic uncertainty makes the loan necessary to support your ongoing operations.
- The funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments.
- You have not and will not receive another loan under this program.
- You will provide to the lender documentation that verifies the number of full-time equivalent employees on payroll and the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight weeks after getting this loan.
- Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.
- All the information you provided in your application and in all supporting documents and forms is true and accurate. Knowingly making a false statement to get a loan under this program is punishable by law.

- You acknowledge that the lender will calculate the eligible loan amount using the tax documents you submitted. You affirm that the tax documents are identical to those you submitted to the IRS. And you also understand, acknowledge, and agree that the lender can share the tax information with the SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.





## Paycheck Protection Program Application Form

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Non-Profit <input type="checkbox"/> Vet Org <input type="checkbox"/> Tribal <input type="checkbox"/> Ind. Cont. <input type="checkbox"/> Self Employed <input type="checkbox"/>		<b>DBA or Tradename if applicable</b>	
<b>Business Legal Name</b>			
<b>Business Primary Address</b>		<b>Business TIN (EIN,SSN)</b>	<b>Business Phone</b>
			(   )   -
		<b>Primary Contact</b>	<b>Email Address</b>

Average Monthly Payroll:	\$	X 2.5 equals Loan Amount:	\$	Number of Jobs:	
Purpose of the loan (select more than one):					
<input type="checkbox"/> Payroll <input type="checkbox"/> Rent / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain): _____					

### Applicant Ownership

List all owners of Applicant with greater than 20% ownership stakes. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN,SSN)	Address

*If questions (1) or (2) below are answered "Yes," the loan will not be approved.*

Question	Yes	No
1. Is the Business or any owner presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Business, any of its owners, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Business or any owner an owner of any other business or have common management with any other business? If yes, attach a listing of all Affiliates and describe the relationship as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Business received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

*Applicants who are individuals and all 20% or greater owners of the business must answer the following questions. If questions (5) or (6) are answered "Yes" or question (7) is answered "No", the loan will not be approved.*

Question	Yes	No
5. Are you presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, on probation or parole?	<input type="checkbox"/>	<input type="checkbox"/>
Initial here to confirm your response to question 5 → _____		
6. Within the last 7 years, for any felony or misdemeanor for a crime against a minor, have you: 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?	<input type="checkbox"/>	<input type="checkbox"/>
Initial here to confirm your response to question 6 → _____		
7. <input type="checkbox"/> I am a U.S. Citizen <u>OR</u> <input type="checkbox"/> I have Lawful Permanent Resident status <input type="checkbox"/> No		
Initial here to confirm your response to question 7 → _____		



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## By Signing Below, You Make the Following Representations, Authorizations, and Certifications

### REPRESENTATIONS AND AUTHORIZATIONS

I represent that:

- I have read the Statements Required by Law and Executive Order included in this form, and I understand them.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business related purposes as specified in the loan application.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.

For Applicants who are individuals and all Associates: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

### CERTIFICATIONS

The Business and each 20% or greater owner must certify in good faith to all of the below by **initialing** next to each one:

- \_\_\_\_\_ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
- \_\_\_\_\_ The funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; I understand that if the funds are used for unauthorized purposes, the federal government may pursue criminal fraud charges.
- \_\_\_\_\_ Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender.
- \_\_\_\_\_ Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. Due to likely high subscription, it is anticipated that not more than twenty-five percent (25%) of the forgiven amount may be for non-payroll costs.
- \_\_\_\_\_ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under this program.
- \_\_\_\_\_ I further certify that the information provided in this application and the information that I have provided in all supporting documents and forms is true and accurate. I realize that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- \_\_\_\_\_ I acknowledge that the lender will calculate the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those I submitted to the IRS. I also understand, acknowledge and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

\_\_\_\_\_  
Signature of Authorized Representative of Business

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Owner of Applicant Business

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



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### **Purpose of this form:**

This form is to be completed by the Applicant and all individuals identified below and *submitted to your SBA Participating Lender*. Submission of the requested information is required to make a determination regarding eligibility for financial assistance. Failure to submit the information would affect that determination.

### **Instructions for completing this form:**

For purposes of calculating "Average Monthly Payroll", most Applicants will use the average monthly payroll for 2019, excluding costs over \$100,000 on an annualized basis for each employee. For seasonal businesses, the Applicant may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019, excluding costs over \$100,000 on an annualized basis for each employee. For new businesses, average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020, excluding costs over \$100,000 on an annualized basis for each employee.

The first section and questions 1-4 request information about the Business. Questions 5-7 are to be completed, signed and dated by each applicant who is an Individual as well as each 20% or greater owner of an Applicant Business. All parties listed below are considered owners of the Applicant Business as defined in 13 CFR § 120.10, as well as "principals."

- For a sole proprietorship, the sole proprietor;
- For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm;
- For a corporation, all owners of 20% or more of the corporation;
- For limited liability companies, all members owning 20% or more of the company; and
- Any Trustor (if the Applicant is owned by a trust).

**Paperwork Reduction Act** – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 8 minutes. Comments about this time or the information requested should be sent to : Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416., and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503.

**Privacy Act (5 U.S.C. 552a)** – Under the provisions of the Privacy Act, you are not required to provide your social security number. Failure to provide your social security number may not affect any right, benefit or privilege to which you are entitled. (But see Debt Collection Notice regarding taxpayer identification number below). Disclosures of name and other personal identifiers are required to provide SBA with sufficient information to make a character determination. When evaluating character, SBA considers the person's integrity, candor, and disposition toward criminal actions. Additionally, SBA is specifically authorized to verify your criminal history, or lack thereof, pursuant to section 7(a)(1)(B), 15 USC Section 636(a)(1)(B) of the Small Business Act (the Act).

**Disclosure of Information:** Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act. The Privacy Act authorizes SBA to make certain "routine uses" of information protected by that Act. One such routine use is the disclosure of information maintained in SBA's system of records when this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature. Specifically, SBA may refer the information to the appropriate agency, whether Federal, State, local or foreign, charged with responsibility for, or otherwise involved in investigation, prosecution, enforcement or prevention of such violations. Another routine use is disclosure to other Federal agencies conducting background checks but only to the extent the information is relevant to the requesting agencies' function. See, 74 F.R. 14890 (2009), and as amended from time to time for additional background and other routine uses. In addition, the CARES Act, requires SBA to register every loan made under the Paycheck Protection Act using the Taxpayer Identification Number (TIN) assigned to the borrower.

**Debt Collection Act of 1982, Deficit Reduction Act of 1984 (31 U.S.C. 3701 et seq. and other titles)** – SBA must obtain your taxpayer identification number when you apply for a loan. If you receive a loan, and do not make payments as they come due, SBA may: (1) report the status of your loan(s) to credit bureaus, (2) hire a collection agency to collect your loan, (3) offset your income tax refund or other amounts due to you from the Federal Government, (4) suspend or debar you or your company from doing business with the Federal Government, (5) refer your loan to the Department of Justice, or (6) foreclose on collateral or take other action permitted in the loan instruments.

**Right to Financial Privacy Act of 1978 (12 U.S.C. 3401)** – The Right to Financial Privacy Act of 1978, grants SBA access rights to financial records held by financial institutions that are or have been doing business with you or your business including any financial institutions participating in a loan or loan guaranty. SBA is only required provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records. SBA's access rights continue for the term of any approved loan guaranty agreement. SBA is also authorized to transfer to another Government authority any financial records concerning an approved loan or loan guaranty, as necessary to process, service or foreclose on a loan guaranty or collect on a defaulted loan guaranty.



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**Freedom of Information Act (5 U.S.C. 552)** – Subject to certain exceptions, SBA must supply information reflected in agency files and records to a person requesting it. Information about approved loans that will be automatically released includes, among other things, statistics on our loan programs (individual borrowers are not identified in the statistics) and other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. All requests under this Act are to be addressed to the nearest SBA office and be identified as a Freedom of Information request.

**Occupational Safety and Health Act (15 U.S.C. 651 et seq.)** – The Occupational Safety and Health Administration (OSHA) can require businesses to modify facilities and procedures to protect employees. Businesses that do not comply may be fined, forced to cease operations, or prevented from starting operations. Signing this form is certification that the applicant, to the best of its knowledge, is in compliance with the applicable OSHA requirements, and will remain in compliance during the life of the loan.

**Civil Rights(13 C.F.R. 112, 113, 117)** – All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to the public on the basis of categories cited in 13 C.F.R., Parts 112, 113, and 117 of SBA Regulations. All borrowers must display the "Equal Employment Opportunity Poster" prescribed by SBA.

**Equal Credit Opportunity Act (15 U.S.C. 1691)** – Creditors are prohibited from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

**Debarment and Suspension Executive Order 12549; (2 CFR Part 180 and Part 2700)** – By submitting this loan application, you certify that neither you nor any Associates have within the past three years been: (a) debarred, suspended, declared ineligible or voluntarily excluded from participation in a transaction by any Federal Agency; (b) formally proposed for debarment, with a final determination still pending; (c) indicted, convicted, or had a civil judgment rendered against you for any of the offenses listed in the regulations or (d) delinquent on any amounts owed to the U.S. Government or its instrumentalities as of the date of execution of this certification.