

GUNSTER CLIENT ALERT

April 1, 2020

THE CARES ACT MAKES LOANS AVAILABLE FOR SMALL BUSINESSES

ARE YOU ELIGIBLE? AND WHAT YOU SHOULD KNOW

The Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”) includes a program, the Paycheck Protection Program (“PPP”) to help small businesses who need financial relief during the Coronavirus 2019 (“COVID-19”) pandemic. The PPP gives eligible businesses access to 100% federally guaranteed, forgivable loans, which are available until June 30, 2020, to help businesses cover payroll and other key expenses, including:

- Salaries, wages, commissions, health care premiums, and other payroll costs
- Existing debt obligations, mortgages, rent, leases
- Utilities, gas, electric, internet

This summary is intended to help you determine if your business is eligible to receive funds under the PPP, and to provide information on how to obtain a PPP forgivable loan.

If you have questions about your eligibility or any other questions about the PPP, the Gunster Law Firm has assembled a COVID-19 Response Team to assist with the PPP application process. Under the CARES Act, interested businesses will apply for PPP loans through local SBA-approved lenders.

ELIGIBILITY – QUESTION 1	
Is your business excluded? Casinos, racetracks, banks, finance companies, real estate investment firms, pyramid sales businesses (e.g., Mary Kay, Amway), businesses owned by a felon, businesses of a prurient nature, and businesses engaging in illegal activities are excluded.	
If Yes:	Ask a Gunster attorney whether an exception is available
If No:	Proceed to Q. 2
ELIGIBILITY – QUESTION 2	
Were you operational on February 15, 2020 and have employees on payroll for which you paid taxes? Did you pay independent contractors?	
If Yes:	Proceed to Q 3
If No:	If you were not operational by February 15, 2020, you are not eligible. If you have not paid payroll taxes, speak to a Gunster attorney. Banks may be hesitant to lend.
ELIGIBILITY – QUESTION 3	
Do you have 500 employees or fewer? For purposes of calculating the number of employees, include: (i) all full-time and part-time employees, and (ii) all employees of affiliated companies.	
If YES:	ELIGIBLE
If NO:	Proceed to Qs. 4(a) & 4(b)
ELIGIBILITY – QUESTIONS 4(a) & 4(b)	
(a) If you have more than 500 employees, are you in an industry that has an employee-based size standard through the Small Business Administration (“SBA”) that is higher than 500 employees? (For example, using the current SBA list, a brewery or cookie manufacturer with 1,250 employees is	

considered "small," however, a new car dealer is considered "small" only if has 200 or fewer employees.)

(b) If you have more than 500 employees, are you a restaurant, hotel or other business that falls within the North American Industry Classification (NAICS) Code # 72 "Accommodations and Food Services, *and* does each of your locations have 500 employees or fewer?

If YES to (a) or (b): ELIGIBLE

If NO: STOP – Not Eligible

APPLICATION PROCESS

- ❖ Deadline: June 30, 2020
- ❖ Must apply through an SBA- or Treasury-approved bank or other lending institute
- ❖ No Application fees
- ❖ No collateral
- ❖ No personal guarantees
- ❖ Lender will require you to certify that:
 - The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations, and
 - You will use the loan to retain employees and maintain payroll, or to make mortgage interest, lease, and utility payments.
- ❖ Gunster recommends that you open a separate account to receive and disperse the loan proceeds.

MAXIMUM LOAN AMOUNT

- ❖ The maximum loan will be an amount equal to 250% of your average monthly "payroll costs" up to \$10 million.
- ❖ For businesses in operation in 2019, the average monthly payroll costs will be an amount equal to total payroll costs for the one-year period preceding the loan origination, divided by 12.
- ❖ For businesses not in operation during the period of February 15, 2019 to June 30, 2019, your average monthly payroll costs will be based on your total payroll costs for the period from January 1, 2020 to February 29, 2020.
- ❖ For seasonal businesses, the average monthly payroll costs will be calculated as follows:
 - (1) total payroll costs for the 12-week period beginning February 15, 2019, divided by 3, or
 - (2) total payroll costs for the 12-week period beginning March 1, 2019, divided by 3.

USE OF LOAN PROCEEDS

- ❖ The purpose of PPP loans is to help employers cover payroll costs, and to a lesser extent, certain permissible expenses during an 8-week period between February 15, 2020 and June 30, 2020.
- ❖ At least 75% of the loan proceeds must be used for payroll costs.
- ❖ "Payroll costs" include salaries (up to an annual rate of pay of \$100,000), hourly wages, commissions, cash tips, paid vacation, family, sick or medical leave, separation payments, and group health insurance premiums, retirement benefits, state or local taxes on employee compensation.
- ❖ Other permissible expenses include utilities, such as electric, gas, water, transportation, telephone,

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or internet, and “debt obligations” incurred before February 15, 2020, such as mortgages, rent payments, and leases.

- ❖ The following expenses are excluded: the portion of an employee’s salary over \$100,000, payroll taxes (FICA and income tax withholdings), income taxes, compensation paid to an employee outside of the U.S., and sick or family leave wages for which a credit is allowed under the Family First Coronavirus Response Act.

LOAN FORGIVENESS & INTEREST RATE

- ❖ Loan proceeds used for payroll costs, utilities and existing debt obligations are forgivable
- ❖ Loan proceeds used for other business-related expenses (e.g., inventory) are not forgivable.
- ❖ The borrower must meet certain workforce and salary maintenance requirements to maximize loan forgiveness. Loan forgiveness will be reduced according to the formula set forth in the CARES Act, unless the borrower rehires employees and/or eliminates the reduction in wages not later than June 30, 2020.
- ❖ The unforgivable portion of a PPP loan will bear interest at 1%, with payments deferred for 6 months to 1-year from loan origination.

CERTAIN CONSIDERATIONS

- ❖ Many credit agreements include covenants requiring lender consent to incur additional debt, as well as leverage tests and covenants that may be impacted by additional debt. You should review your existing credit agreements and work closely with your lenders.
- ❖ Apply early: the SBA has advised that loans will be disbursed on a first-come-first-served basis.
- ❖ Reportedly, banks are focusing on existing customers first and recommend that you apply through your existing banking relationships.
- ❖ A sample application is available at sba.gov, which provides a preview of what information may be requested by your lending institution.
- ❖ Consideration should be given to opening a separate account to receive and track the use of proceeds for documentation of loan forgiveness.

ELIGIBILITY & OTHER LOAN PROGRAMS

FLA Bridge Loans:

- ❖ If eligible, you can obtain an interest-free state bridge loan (\$50K) with a one-year term. Not forgivable like a PPP loan.

Economic Injury Disaster Loans (EIDL) related to COVID-19:

- ❖ EIDL is a loan program that existed prior to the COVID-19 pandemic, but the CARES Act has loosened some of the underwriting criteria. Funds are available to be loaned by the SBA to small businesses, subject to SBA approval and the creditworthiness of the borrower.
- ❖ You can have both an EIDL loan and a PPP loan, however, they cannot be used for the same purposes.
- ❖ EIDL loans are not forgivable like a PPP loan.
- ❖ If you took advantage of an emergency EIDL advance of up to \$10,000, the advance would be subtracted from the amount forgiven under PPP loan.

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