



ATTORNEYS AND COUNSELORS AT LAW

James Richard Martin • Jack H. Petty
Robert R. Redwine • Christopher W. Cotner
Mark H. Price • Ryan C. Owens
and Joseph C. Schubert

Ryan C. Owens, Attorney
Direct Line: 405-603-5080
Ryan@BethanyLaw.com

6666 NW 39th Expressway
Bethany, Oklahoma 73008
Phone: 405/787-6911
Fax: 405/787-6913
Direct Fax: 405/470-9400
www.BethanyLaw.com

MEMORANDUM

TO: Business Clients
RE: SBA Emergency Paycheck Protection Program for COVID-19
DATE: Friday, May 1, 2020

This memorandum is designed to provide general advice to employers seeking federal financial assistance via the federal Paycheck Protection Program in order to respond to the global COVID-19 Pandemic. This situation is dynamic, and negotiations are already underway on a fourth congressional stimulus bill to address the financial needs of Americans in response to this crisis. **Each situation is unique; therefore, we recommend that you contact our office to discuss your individual concerns.**

UNDERSTANDING THE FEDERAL RESPONSE TO COVID-19

To date Congress passed three stimulus bills, and one supplemental funding bill, to address the myriad health and financial consequences related to COVID-19. This memo addresses one component of the most recently passed legislation dubbed the federal “CARES” (H.R. 748) known as the Paycheck Protection Program.

A. Paycheck Protection Program (PPP) \$350 Billion Available

Title I of CARES, the Keeping American Workers Paid and Employed Act, will provide \$349 billion toward a newly established Paycheck Protection Program (also referred to herein as “PPP”).

This Program is intended to provide financial assistance and economic relief to small businesses throughout the country that are, or will be, adversely impacted by the COVID-19 pandemic. This program enables the Small Business Administration (the “SBA”) to participate in a loan on a deferred basis, and to guarantee 100 percent of the loans made under this program. As detailed below, the CARES Act substantially expands the scope and availability of financial assistance that is available to small business owners.

1. What types of businesses and entities are eligible to participate?

In general, from February 15, 2020 to June 30, 2020 (the “Covered Period”), any business concern, nonprofit organization, veterans organization, or Tribal business concern can receive a covered loan if they employ **not more than** the greater of (a) 500 employees; or (b) if applicable, the size standard in number of employees established by the Administration for the industry in

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which they operate (i.e. NAICS code). Sole proprietors, independent contractors, and self-employed individuals will also be eligible to receive a loan, but must prove their eligibility by submitting documentation, *i.e.*, payroll tax filings to the IRS, Forms 1099-MISC, and income and expenses from a sole proprietorship.

2. What are lenders looking for from borrowers?

In evaluating eligibility, lenders are directed to consider whether the borrower was in operation before February 15, 2020 and had employees, including paid independent contractors, for whom the borrower paid salaries, payroll taxes, or remitted payment for services.

Borrowers must attest that the loan request is necessary to support ongoing operations and that no other loan has been received to cover the same needs as are covered by PPP.

3. What are lenders NOT looking for from borrowers?

A borrower under the PPP is NOT required to seek credit elsewhere before applying for this SBA assistance. However, see below regarding recent guidance from the SBA regarding the availability of other liquidity to the borrower as it relates to the Borrower's loan application.

The PPP does NOT require collateral or a personal guarantee.

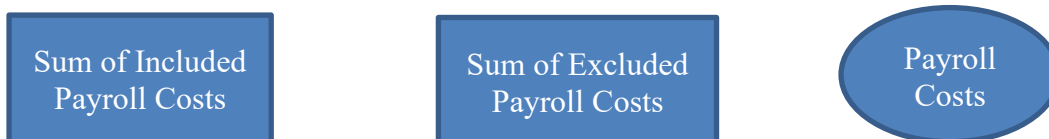
4. How much can my business borrow?

PPP loans can be up to 2.5 times the borrower's average monthly payroll costs, not to exceed \$10 million.

If you were in business February 15, 2019 – June 30, 2019 the maximum loan is 250% of your average monthly payroll costs during that time period. If your business employs seasonal workers, you can opt to choose March 1, 2019 as your time period start date.

For businesses that began after June 30, 2019 the maximum loan amount is 250% of your average monthly payroll costs between January 1, 2020 and February 29, 2020.

5. How do I calculate my average monthly payroll costs?



Included Payroll Costs:

- Compensation (salary, wage, commission, or similar compensation, payment of cash tips or equivalent),
- Payment for vacation, parental, family, medical, or sick leave,

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- Allowance for dismissal or separation,
- Payment required for the provision of group health care benefits, including insurance premiums,
- Payment of any retirement benefit, AND
- Payment of State or local taxes assessed on the compensation of employees.

Excluded Payroll Costs:

- Employee / owner compensation exceeding \$100,000.00,
- Taxes imposed or withheld under Chapter 21 (FICA), Chapter 22 (Railroad Retirement), and Chapter 24 (Income Tax) of the IRS Code,
- Compensation of employees whose principal place of residence is outside of the U.S., AND
- Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the *Families First Coronavirus Response Act*.

6. *What are the allowable uses of proceeds from a PPP loan?*

PPP proceeds may be used for the following:

- Payroll costs (denoted above),
- 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 compensations (see exclusions above),
- Payments of interest on any mortgage obligation incurred before February 15, 2020 (which shall not include any prepayment of or payment of principal on a mortgage obligation),
- Rent under a lease agreement in force before February 15, 2020,
- Utilities for which service began before February 15, 2020, AND / OR
- Interest on any other debt obligations that were incurred before the covered period.

7. *How do I apply for a PPP loan?*

The PPP is administered through the Small Business Administration and will be made available through current SBA 7(a) lenders as well as other lenders, including non-bank lenders, that are authorized by the United States Department of Treasury to participate in the Program.

Visit www.sba.gov for a list of SBA lenders.

CRITICAL AUDIT POINT FOR PPP LOAN!!!

Borrowers will need to **CERTIFY IN GOOD FAITH** the following:

- Current economic uncertainty makes the loan **necessary to support your ongoing operations.**
 - ✓ On April 23, 2020 the SBA issued new guidance further clarifying this required certification: “before submitting a PPP application, all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes

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this loan request necessary to support the ongoing operations of the Applicant. Borrowers must make this certification in good faith, **taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.**”

- ✓ On April 28, 2020, the SBA issued additional guidance reinforcing their previous guidance from April 23, 2020, suggesting that privately owned business with access to other sources of liquidity might not be able to certify in good faith that the PPP loan is “necessary to support the ongoing operations of the Applicant.”
- ✓ On April 29, 2020, the SBA issued additional guidance regarding the importance of the individual certification of need for the PPP loan. The SBA will be reviewing “all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender’s submission of the borrower’s loan forgiveness application.”
 - **This review is done to ensure that the PPP loans were made only to “eligible borrowers in need.”**
- The funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments.
 - ✓ The eight week timeclock starts once funds are disbursed by the lending institution to the Borrower, which is to be no later than 10 days after the PPP loan has been approved.
- You have not and will not receive another loan under this program [PPP].
- 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.
 - ✓ **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.

8. When can I apply?

Starting April 3, 2020, small businesses and sole proprietorships can apply.

Starting April 10, 2020, independent contractors and self-employed individuals can apply.

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All PPP loan applications must be submitted to an SBA approved lender no later than Tuesday, June 30, 2020!

9. When will I get funded and how long is the loan?

According to recently released FAQ's from the SBA, the SBA is requiring lenders to "make the first [PPP loan] disbursement no later than ten calendar days from the date of loan approval."

PPP loan recipients have eight weeks to use the proceeds according the requirements of PPP. The SBA has determined that "the eight-week period beings on the date the lender makes the first disbursement of the PPP loan to the borrower.

10. Can any of the PPP loan be forgiven?

YES! The Paycheck Protection Program offers borrowers up to 100% percent forgiveness if the PPP loan proceeds are used for approved purposes over the 8-week period after the loan is made AND employee and compensation levels are maintained.

In order to receive loan forgiveness, the borrower must apply through their SBA lender and provide the following information:

- ✓ Documentation verifying:
 - The number of employees on payroll and pay rates (excluding any employee or owner compensation in excess of \$100,000.00), including IRS payroll tax filings and State income, payroll and unemployment insurance filings.
 - 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.
- ✓ Documentation verifying:
 - Payments on covered mortgage obligations (interest only), lease obligations (payment of rent), and utilities.
- ✓ Certification from a representative of your business or organization that is authorized to make such certification, that the documentation provided is true and that the amount that is being forgiven was used in accordance with the program's guidelines for use.

SBA has announced that **not more than 25% of the forgiven amount may be for non-payroll costs**. Loan agreements and additional guidance from SBA will help clarify the amount of PPP proceeds which must be applied to payroll expenses in order for the entire PPP loan to be forgiven.

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Borrowers will submit PPP forgiveness requests to the lender that is servicing their PPP loan. The lender must make a decision on the forgiveness **within 60 days**.

NOTE ON INTERPLAY WITH OTHER RELIEF PROGRAMS

Borrowers cannot use PPP loan proceeds to “double up” benefits for the following:

- ***Family/Sick Leave Tax Credits:*** A borrower is generally eligible for PPP loans under the CARES Act even if the employer is also receiving sick/family leave tax credits under FFCRA; however, the amount of “payroll costs” included in the loan will not include the amount of wages/expenses for required sick/family leave under FFCRA and the loan proceeds may not be used for wages/expenses for required FFCRA sick/family leave for which a tax credit is allowed.
- ***Employee Retention Tax Credit:*** The CARES Act provides a refundable payroll tax credit equal to 50% of qualified wages for certain “eligible employers” for wages paid or incurred **between March 13, 2020 and December 31, 2020** (an “employee retention tax credit”). An employer may not however “double up” on tax credits for the same wages. Thus, an employer may not take an employee retention tax credit for required sick/family leave wages under FFCRA for which the employer also receives a payroll tax credit. **Further, employers may not receive an employee retention tax credit if the employer also receives a PPP loan.** CARES Act section 2301(1)(3) specifically requires Treasury to issue regulatory guidance on how the IRS will recoup the tax credit if an employer receives a credit and then also receives a PPP loan.
- ***Employer Deferral of Social Security Taxes:*** Under CARES Act section 2302, an employer may defer the employer portion of Social Security taxes due between March 27 and December 31, 2020, provided at least 50% of the deferred taxes are paid by the end of 2021 and the remainder is paid by the end of 2022. However, employers that have their indebtedness forgiven under the Paycheck Protection Program are **not eligible to defer these taxes.**

11. What are the repayment terms for any amount of PPP that is not forgiven?

For any amounts not forgiven, the maximum repayment term is ten (10) years at a maximum interest rate of four percent (4%). There are ZERO loan fees and ZERO prepayment fees.

NOTE: Recent guidance from the U.S. Department of Treasury has been updated to reflect the following loan terms:

- Interest Rate: **1.00% fixed rate**
- Term: **2 years**
- Prepayment Penalties: **NO**

NOTE: PPP loan payments can be deferred from six (6) months to one (1) year!

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12. Is there coordination among the various SBA loan programs with PPP?

YES! Borrowers may apply for PPP loans and other SBA financial assistance, including Economic Injury Disaster Loans (EIDLs), 7(a) loans, 504 loans, and microloans, and receive investment capital from Small Business Investment Corporations (SBICs).

NOTE: Borrowers cannot use PPP loans for the same purposes as any other active SBA loans during the same period.

Emergency Economic Injury Grant and Economic Injury Disaster Loan (EIDL) recipients and those who receive loan payment relief through the Small Business Debt Relief Program may apply for and take out a PPP loan as long as there is no duplication in the use of funds!

13. Potential Risks and Liability

Although the PPP loan requires no collateral and no personal guarantee from borrowers, H.R. 748 and the SBA's Interim Final Rule interpreting the PPP provide that the SBA "will have recourse against any individual shareholder, member, or partner for...unauthorized use" of PPP loan proceeds.

Lenders are empowered under H.R. 748 and the SBA Interim Final Rule to make forgiveness decisions. In order to make these decisions documentation regarding receipt and use of PPP loan proceeds will be required. The SBA may require audits of certain forgiveness decisions though the SBA has not yet released any rules or guidance on PPP loan forgiveness.

H.R. 748 and the SBA Interim Final Rule on PPP provide that lenders are specifically "held harmless" by the SBA for any reliance on the certification and/or documentation provided by a borrower. To encourage borrowers to make truthful statements to the SBA and lenders, three separate criminal provisions of the United State Code [18 USC 1001 and 3571; 15 USC 645; and 18 USC 1014] are cited in the SBA Interim Final Rule to remind borrowers that fraudulent certifications and/or misuse of loan proceeds may be criminally punished by up to 30 years in prison and/or by a fine of not more than \$1,000,000.00.

As noted above, borrowers are required to certify that "current economic uncertainty makes the loan necessary to support your ongoing operations." Unfortunately, the SBA has not provided any guidance, definition or color about the nature or extent of the required impact to operations that would make the loan request "necessary to support ongoing operations."

Without knowing how the SBA will define the necessity for a PPP loan to an individual borrower, and what the SBA will require from borrowers to verify said necessity, clients face uncertainty and potential legal exposure.

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14. Strategy for Risk Mitigation

- ✓ When considering whether to apply for a PPP loan we recommend that clients prepare a plan for the use of the PPP loan proceeds during the covered period of the loan. A client's pro forma should address how the loan proceeds will be used by the borrower's business during the covered period to meet all allowable expenses of PPP loan.
 - As discussed above, no more than 25% of PPP loan proceeds may be used for "non-payroll costs." Consider for your business whether you can meet the requirement of expending 75% of the PPP loan proceeds exclusively on payroll costs during the covered period.
 - Will your business be back up and running after the eight-week period of the PPP loan **OR** is it possible you will need to furlough employees again?
- ✓ Consider your motivation for pursuing the PPP loan and use the pro forma you create to justify the loan as "necessary to support ongoing operations."
- ✓ **SEGREGATE PPP LOAN PROCEEDS FROM ALL OTHER BUSINESS BANK ACCOUNTS!**
- ✓ Execute a written agreement among all business owners [members, shareholders, officers, partners, etc.] to provide that during the covered period of the PPP loan, the business will operate primarily from the PPP segregated bank account, and all highly compensated employees, including owners, will honor the salary caps put in place by the PPP [i.e. \$100,000 annual / \$8,333.33 gross per month] and will not seek nor be eligible for draws, stock buybacks, or other compensation from the business during the covered period.
- ✓ Minority owners and/or dissenting owners [shareholders, partners, members, etc. choosing not to participate in PPP] may want an Indemnity Agreement executed among the owners to further restrict any potential liability for the individual minority / dissenting owner.

ACCESS U.S. DEPARTMENT OF TREASURY GUIDANCE:

<https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>

ACCESS SBA INTERIM FINAL RULE ON PPP

https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL_0.pdf

ACCESS TEXT OF H.R. 748

<https://www.congress.gov/bill/116th-congress/house-bill/748/text>

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**Paycheck Protection Program
Application Form**

OMB Control No.: 3245-

Expiration Date: 06/30/2020

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

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 OR <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.

NOTE: The legal implications of COVID-19 are evolving rapidly, and every employer's situation is unique, please contact our office to discuss your plans, questions and concerns.