

April 3, 2020

**UPDATE:**  
**CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT**  
**PAYCHECK PROTECTION PROGRAM**

On April 2, 2020, the Small Business Administration (the “Administration”) published an Interim Final Rule to provide guidance to borrowers and lenders in applying for and disbursing loans (“Covered Loans”) under the Paycheck Protection Program (the “Program”) set forth in the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). The Interim Final Rule is effective immediately, although the Administration will consider any comments received to the Interim Final Rule following its publication. The Interim Final Rule addresses, among other things, the following items:

- Clarifies that amounts paid by a borrower to independent contractors are not included in the definition of “payroll costs” set forth in the CARES Act, and therefore should not be included by a borrower in calculating the maximum amount of a borrower’s Covered Loan. Additionally, amounts paid to independent contractors are ineligible for loan forgiveness under the Program. The Administration has reiterated in the Interim Final Rule that independent contractors have the ability to apply for a Covered Loan on their own.
- Clarifies that the annual interest rate on Covered Loans will be 100 basis points (i.e., one percent).
- Clarifies that the maturity date of Covered Loans will be two years.
- Clarifies that first payment on the amount of a Covered Loan not otherwise forgiven under the Program will be deferred for six months following the disbursement date of the Covered Loan.
- Clarifies that 75 percent of Covered Loan proceeds must be spent on payroll costs (as defined in the CARES Act, as modified by the Interim Final Rule), and that no more than 25 percent of Covered Loan proceeds spent on non-payroll costs may be forgiven under the Program.
- Provides that a borrower must make the following certifications in connection with an application for a Covered Loan: (a) that the borrower was in operation on February 15, 2020, and had employees or independent contractors; (b) that current economic uncertainty makes the request for a Covered Loan necessary to support the ongoing operations of the borrower; (c) that Covered Loan proceeds will only be used for eligible purposes, including that no more than 25 percent of Covered Loan proceeds will be used for non-payroll costs; (d) that documentation verifying the number of full-time equivalent

employees (as defined in the CARES Act) on payroll as well as the dollar amounts of payroll costs, interest payments on mortgages, rent, and utility payments for the eight-week period following disbursement of the Covered Loan will be provided to the lender; (e) that loan forgiveness will be provided for the sum of documented payroll costs, interest payments on mortgages, rent, and utility payments (subject to the 25 percent limitation on non-payroll costs set forth above); (f) that during the period beginning February 15, 2020 and ending on December 31, 2020, the borrower has not and will not receive another Covered Loan under the Program; (g) that the information provided in the Covered Loan application and in all supporting documentation is true and accurate in all material respects; and (h) that the lender will independently verify the eligible Covered Loan amount using tax documents that the borrower has submitted.

- Clarifies that if a borrower received an Economic Injury Disaster Loan (“EID Loan”) between January 31, 2020 and April 3, 2020, the borrower can still apply for a Covered Loan. If the borrower’s EID Loan was not used for payroll costs, it does not affect the borrower’s eligibility for a Covered Loan. If the borrower’s EID Loan was used for payroll costs, the Covered Loan must be used to refinance the EID Loan.
- Clarifies that Covered Loan applications and supporting documentation may be signed digitally.
- States that the Administration intends to provide additional guidance with respect to the applicability of the SBA’s affiliation rules to Covered Loans “promptly.”

The Administration has provided the Interim Final Rule in an effort to provide lenders with necessary guidance so that lenders are ready to begin accepting Covered Loan applications on April 3, 2020; however, it seems likely that lenders will be delayed in implementing the guidance provided by the Interim Final Rule and in accepting Covered Loan applications. Please contact your lender for further information.

Except as modified by the Interim Final Rule or subsequent guidance provided by the Administration or the Secretary of the Treasury, the provisions of the CARES Act set forth in our Client Notice on the subject dated March 27, 2020 continue to apply to Covered Loans and the Program. The full text of the Interim Final Rule can be found at <https://content.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL.pdf>.

*The foregoing legislative update is designed to be accurate and authoritative but is not intended to provide and should not be construed as providing legal advice or as creating any attorney-client relationship with the author or Parr Brown Gee & Loveless, P.C. For legal advice regarding the Coronavirus Aid, Relief, and Economic Security Act, you should consult with your legal counsel.*