



FOOD VENTURE FINANCING NEWS

APRIL 03, 2020

Editor's Note: Today is the first day that applications are being accepted for the \$349 billion SBA Paycheck Protection Program (PPP) enacted under the CARES Act. Given the urgency of this situation, we are getting this information out to you today in advance of our next Weekly Issue (No. 3). Please note that aspects of the PPP are still fluid as the Treasury Department works with SBA lenders to try to iron out the details. The application form was changed last night; the current form is attached by a link below. Some banks have decided not to accept applications given the current flux in the process and applicable regulations; check with your bank as soon as possible to determine if they are accepting applications. The Treasury Department confirmed its "first come, first served" policy in its latest communications. Contact us by email this weekend if you have any specific questions about the PPP and we will respond with a FAQ response summary to our readership on Monday. **D.B. (donbuder@dwt.com)**

Who is eligible?

Companies with 500 or fewer employees (exemptions apply to the hospitality and restaurant industry, and a higher number may apply to certain industries as set forth in SBA regulations).

What are the key terms of PPP financing?

- PPP loan amounts will be limited to 2.5 times your average monthly payroll costs, capped at \$10mm
- PPP loans will have a 1.0% interest rate
- Payments are deferred for six months, but interest will accrue during this time
- PPP loans are due in two years (but may be prepaid)
- No collateral or personal guarantees are required
- PPP loans may be forgiven provided funds are expended on permitted items (see below). Loan forgiveness may be reduced if: (a) you reduce your FTEs during the eight-week period after you receive your loan; (b) you decrease wages by more than 25% for employees making less than \$100,000 in 2019; or (c) you fail to resume employment for employees who were furloughed or terminated between February 15 and April 26, 2020.

How do I apply?

- Contact your bank immediately. Ask if they are a Preferred SBA Lender. If they are, ask if you can have priority status. If they are not, ask if they can refer you to a bank that is.
- The current PPP loan application is [attached here](#).
- The filing deadline is June 30, 2020, but we recommend you file as soon as possible. Loan funds will be disbursed on a first come, first served basis.

What documentation must I file with my application?

Lenders will likely request at least the following: (a) your tax return and/or year-end financials, (b) verification of the number of employees and payroll costs, (c) bank statements, and (d) your governing documents (such as Articles of Incorporation and Bylaws for corporations)

What restrictions apply to use of PPP loan funds?

- The principal permitted use are payroll costs, including benefits
- Other permitted uses are for the following costs if incurred or in connection with agreements in force before February 15, 2020: (a) interest on mortgage obligations; (b) rent under lease agreements; and (c) utilities. Note that no more than 25% of the loan forgiveness amount may be attributable to non-payroll costs.
- *Key Tip:* Set up a separate bank account for PPE loan funds. It will be easier to track and verify expenditures using PPP funds if you do so.

What are the major obstacles to obtaining PPP loans?

Determine if your existing credit facilities have restrictions on additional indebtedness.

Are your investors considered "affiliates" for purposes of your application?

- If your investors are considered "affiliates" that may complicate or compromise your application process, as the number of employees of such investors and their other portfolio companies are added to the applicant's numbers when determining size. As of today the SBA is applying previously determined standards of assessing whether the affiliation rules apply, including whether an investor has "affirmative control" or "negative control" of a portfolio company. There is hope that these standards may be relaxed with respect to eligibility for a PPP.
- Whether any of your investors is an "affiliate" is a fact-specific determination based on your governing documents and contractual agreements with your investors. Consult with your legal counsel to determine whether any of your investors may be deemed to constitute an "affiliate."

What to expect

The process is unlikely to run smoothly. We hear that many SBA lenders are not prepared to process the onslaught of potential PPP applications. While the

underwriting process is intended to be streamline, systems have not yet been put in place to process the expected number of applications. The projected 3-6 week timeline to fund PPE loans may not be realistic.

If your bank is not an approved SBA lender, the application/funding process may be more difficult with a different SBA lender that is not familiar with your business.

Please check the links below for additional information on the PPP financing program.

We particularly recommend that segment on SBA Financing presented this week by K2 Financing and First Horizon Bank in the [webinar hosted by Naturally Bay Area](#), Gary Hirschberg of the Hirschberg Entrepreneurship Institute, and Bob Burke of [Natural Products Consulting](#) for expert guidance.

The US Treasury also issued [interim rules](#), which in some instances are contrary to the Act but may have the force of law.

More information is available on the [US Treasury website](#) as well.

Our team at DWT will continue to provide up-to-date insights and remote access events regarding COVID-19 concerns. For the most recent developments visit www.dwt.com/COVID-19.

To attend one of our free webinars covering a broad range of COVID-19 topics, please visit our [Events](#) page.

At Davis Wright Tremaine LLP (DWT), we are proud to have one of the largest Food & Beverage legal practices in the country, with over 40 attorneys representing food innovators, entrepreneurs, and investors at every level of the food chain, from Farm to Label.

Please contact us if we can assist you in any way in these unprecedented times.



DON BUDER

Partner

415.276.6593

donbuder@dwt.com

[Forward to a friend](#) | [unsubscribe](#) | [view online](#)

This announcement is a publication of Davis Wright Tremaine LLP. Our purpose in publishing this announcement is to inform our clients and friends of recent legal developments. It is not intended, nor should it be used, as a substitute for specific legal advice as legal counsel may only be given in response to inquiries regarding particular situations. Attorney advertising. Prior results do not guarantee a similar outcome.