

CLIENT GUIDANCE
THE CARES ACT'S PAYCHECK PROTECTION LOAN
GUIDELINES FOR CORPORATE APPROVALS

Under the CARES Act, the Paycheck Protection Program¹ (“PPP”) provides for \$349 billion of forgivable Small Business Administration (“SBA”) loans to qualifying businesses. One such qualifying business eligible for SBA loans are non-profit organizations that: (a) are tax exempt under Section 501(c)(3) or Section 501(c)(19) of the U.S. Internal Revenue Code, and (b) have fewer than 500 employees. This would include certain religious and charitable corporations. Lenders will begin processing loan applications for such organizations, as soon as April 3, 2020. For the most current information, please refer to our website, www.cbmslaw.com.

If a non-profit organization or religious corporation seeks to proceed with applying and securing a loan as part of PPP, such corporation must consider the following items of corporate governance:

- 1) **Review Corporation Documents:**
 - a) Confirm organization’s corporate documents, certificate of incorporation, bylaws, and/or constitution, are in possession and current.
- 2) **Determine Voting Requirements:**
 - a) Confirm which corporate bodies (members/board) are required to vote on financial transactions of the corporation.
 - b) Determine voting requirements of member vote (i.e. congregational vote) and board of directors/trustees vote.
- 3) **Determine Meeting Requirements:**
 - a) Confirm the process for calling a meeting.
 - b) Determine if the meeting can be conducted telephonically/electronically/remotely by reviewing the corporate documents.
 - c) Determine what constitutes a quorum (the number of people necessary to attend).
 - d) Determine how many votes are required to pass a resolution.
- 4) **Prepare corporate action:**
 - a) Attached is proposed language for the necessary bodies to approve.
 - i) Please note: this language is a sample and may need to be tailored to each corporation’s corporate documents² and expanded upon.
 - ii) Those items left in brackets are for customization to the appropriate name/title/officer in connection with your corporation. Please replace the bracketed language with the appropriate language for your corporation.
- 5) **Consult with your lender:**
 - a) Consult your lender if they require any other corporate documents and approvals including a formal certificate of Secretary. The attached language approves a subsequent certificate of Secretary, if required.

¹ <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>.

² **Disclaimer:** Each entity, based on its specific circumstances, must determine whether to seek and secure an loan. In no way is Capell Barnett Matalon & Schoenfeld LLP advising that it is appropriate for you to seek a loan. If your religious corporation or non-profit organization requires assistance, please contact **Renato Matos, Esq.**, at rmatos@cbmslaw.com.

PROPOSED RESOLUTION LANGUAGE

WHEREAS, **[Entity Name]** has been adversely impacted by the COVID-19 pandemic (“COVID-19 Pandemic”) and desires to apply for financial assistance through a loan up to the maximum amount as permitted in the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) under the “Paycheck Protection Program” as codified at Section 1102 of the CARES Act (the “PPP Loan”);

NOW, THEREFORE, be it

RESOLVED, that the undertaking of the PPP Loan is hereby approved and authorized, including the completion and submission of the application for the PPP Loan, attached as **Exhibit A**; and

RESOLVED, that the **[Officer Title / Pastor]**, **[Additional Title]** and other officers of **[Entity Name]** (“Authorized Persons”) are, and each of them with full authority to act without the others hereby is, authorized to execute and deliver an application, and other related documents, instruments, certificates and affidavits required to secure a loan, including, without limitation, commitment letters, loan and credit agreements, promissory notes, security agreements, officers’ certificates, and take any other action as they consider appropriate, including to effect the purposes of the preceding resolutions, and the execution by any Authorized Persons of the instruments or documents, or the doing by them of any act in connection with the foregoing matters, shall conclusively establish his or her authority therefor from **[Corporate Body, i.e. Congregation/Board]** and the approval and ratification by the **[Corporate Body]** of the **[Entity Name]** of the instruments and documents so executed and the actions so taken; and

RESOLVED, that in connection with the PPP Loan contemplated in the preceding resolutions, the Secretary or the Assistant Secretary of **[Entity Name]** be, and hereby are, each authorized in the name and on behalf of **[Entity Name]**, to certify any more formal or detailed resolutions as that officer may deem necessary, desirable, advisable or appropriate to

consummate, effectuate, carry out or further the PPP Loan contemplated by and the intent and purposes of the foregoing resolutions and that, thereupon, those resolutions shall be deemed adopted as and for the resolutions of the [**Corporate Body**] as if set forth at length herein.

[Remainder of Page Intentionally Left Blank]

EXHIBIT A
APPLICATION FOR LOAN



Paycheck Protection Program Application Form

OMB Control No.: 3245-0407
Expiration Date: 09/30/2020

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



Paycheck Protection Program Application Form

OMB Control No.: 3245-0407
Expiration Date: 09/30/2020

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 guarantee, as necessary to process, service or foreclose on a loan guaranty or collect on a defaulted loan guaranty.

Freedom of Information Act (5 U.S.C. 552) – Subject to certain exceptions, SBA must supply information reflected in agency files and



Paycheck Protection Program Application Form

OMB Control No.: 3245-0407
Expiration Date: 09/30/2020

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.

SAMPLE