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**ECONOMIC DEVELOPMENT &
INVESTMENT GROUP'S**

**SMALL
BUSINESS
TOOLKIT**

MOBILIZING FOR EQUALITY



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MOBILIZING FOR EQUALITY

TOPIC	PAGE
New Entity Formation Checklist.....	3
Employment Considerations Checklist.....	4
Intellectual Property Checklist.....	6
Resources	
New Entity Formation Resource List	8
Employment Consideration Resources List	9
Intellectual Property Resource List	10
Paycheck Protection Program	12

NEW ENTITY FORMATION CHECKLIST

1. Pre-incorporation/formation

- Determine type of entity you would like to create (corporation, limited liability company, partnership, etc.)
- Check name availability under state law
- Do trademark search for name/logo
- Secure domain names

2. For Corporations - Incorporation

- Choose state of incorporation and registered agent
- Prepare and file certificate of incorporation
- Prepare bylaws

3. Actions of Incorporator

- Appoint board if not named in certificate of incorporation

4. Organizational Meeting (this can be held by unanimous written consent)

- Adopt bylaws
- Elect officers
- Adopt banking resolutions
- Authorize filing of foreign qualifications to do business in other jurisdictions
- Authorize filing of EIN with IRS for tax ID number
- Approve form of specimen Stock Certificate
- Approve issuance of stock

5. State Tax and Corporate Issues

- Register to do business in any applicable foreign jurisdictions

6. Other Organizational Steps

- File trademark registrations
- Obtain directors and officers liability insurance
- Open corporate bank accounts

EMPLOYMENT CONSIDERATIONS CHECKLIST

1. Independent Contractors Versus Employees

Federal Legal Tests

- See IRS Guidelines for general factors for contractor (1099) versus employee status (W-2)

Basic Federal Factors

- Right to control work
 - Schedule and work hours
 - Supervision and oversight
 - Training and instructions
- Outside the usual course of business
 - Compare services or products offered – are they distinct?
 - Is the work performed at your business site or somewhere else?
- Independent “business”
 - Type of compensation – flat rate or hourly?
 - Supplies/equipment and investment – who supplies?
 - Expense reimbursement
 - Other clients or attempt to find clients?
 - Noncompete limitations for contractors
 - Length of relationship – temporary/defined length or long-term

Contractor Agreement – template language/options

State Legal Tests

- Varies by jurisdiction and relevant employment or tax law – may be stricter than federal standards on classifying individuals as contractors rather than as employees

2. Hiring Your First Employees

Hiring Process

- Job postings
 - Align with job description and requirements
 - Don't ask “discriminatory” questions
 - Don't (in general) ask about criminal arrests and convictions (ban the box)
- Interviews
 - Focus on job description and requirements
 - Document information received and learned
 - Use of social media?

Offer Letters – template language/options

- Define job, start date, compensation, expected hours, and at-will employment status versus fixed term
- Optional – confidentiality restrictions? (NDAs, Noncompetes, etc.)

Federal I-9 Work Authorization Form

Initial Employment Law Obligations

- EIN (federal and state)
- HR systems and benefits administration
- Payroll system + FICA (Social Security), Medicare, and federal (W-4) and state income tax withholding
- Minimum wage (federal, state, and/or local)
- Overtime wage (exempt/nonexempt)
- Benefits programs
- Workers' compensation (state-based requirements)
- Unemployment compensation (state-based requirements)
- Mandatory notices and posters (federal, state, and/or local)

3. Ongoing Legal Obligations and Costs

Nondiscrimination protections

- Federal – Title VII and other equal employment opportunity laws
- State/local – varies by jurisdiction, but often more expansive than Title VII

Leave protections/disability accommodations

- Federal – Family and Medical Leave Act (FMLA); Americans with Disabilities Act (ADA)
- State/local – varies by jurisdiction, including paid sick or leave requirements
- Special COVID-19-era obligations under federal, state, or local law

Employee handbooks and policies

INTELLECTUAL PROPERTY CHECKLIST

1. What is Intellectual Property (IP)?

- Patents (inventions)
- Copyrights (created content – software, videos, photos, websites, books, magazines, news stories)
- Trademarks (business and/or product names/logos)
- Trade Secrets (computer source code, customer lists, business contacts, manufacturing processes, product formulations)
- Confidential Information (any business information that should not be disclosed – both company and third party)
- Personal Information of Employees and Customers (e.g., Personally Identifiable Information (PII), Personal Health Information (PHI), Electronic Health Records (EHR))

2. Getting Started – Secure Your Core IP

- Decide on business name/logo
- Check if business name/logo is available
 - Different from name/logo used by similar business (especially if registered).
 - Check if suitable web domain name is available.
- Register your business name/logos/key brands/product names
 - Register business name/logos/key brands/product names with US Patent and Trademark Office and/or State Trademark Office.
 - Register your domain name with domain name registrar ([check the ICANN website for a list of registrars](#)).
 - Register domain name with US Patent and Trademark Office and/or State Trademark Office.
- Ensure that your business owns (or has license to) all IP used in business:
 - All **Founders** assign all prior IP to company.
 - All **Employees** execute Confidential Information and Inventions Assignment Agreement to (1) assign to company all IP they create while employees, and (2) agree not to disclose or misuse company confidential information.
 - All **Contractors** execute Contractor Agreement to (1) assign (preferable) or license all work product to company, and (2) maintain confidentiality of company information.
 - All **Website Developers** execute Website Developer Agreement to (1) assign all website code, including any future code or fixes developed for website, to company, and (2) maintain confidentiality of company information.
- Adopt business policies for:
 - Use of Open Source Software.
 - Use of Third-Party IP (including licensed IP and copyrighted materials).
 - Use and Disclosure of Company Confidential Information.
 - Data Privacy (Protection of employee and customer data).
 - IT Security (Protection of computer resources, network and data storage).

3. Protect Your IP Going Forward

- Register your IP
 - Patents (US and/or international patent applications) – file patent applications on differentiating technology.
 - Designs (US and/or international design applications) – file design applications for distinctive ornamental product features.
 - Trademarks (US and/or international TM applications) – file trademark applications for key product names.
 - Copyrights – Register with Library of Congress (copyright protection is automatic – but registration has advantages in litigation).
- Perfect and assert ownership in your IP
 - Patents, designs, trademarks, and copyrights should be assigned to company.
 - Copyright notices should be applied to company software.
 - Use trademark attributions and symbols any time you use your marks in commerce.
 - Label and protect your confidential information and trade secrets.
- Train employees on appropriate use and disclosure of company confidential information
- Be careful and consistent with IP agreements
 - Don't assign, or grant unreasonably broad licenses to, your IP (e.g., to customer, joint venture partner, or investor).
 - Try not to offer broad IP representations and warranties, indemnities.

4. Avoid Infringing Third-Party Rights:

- Don't misuse third-party-licensed IP
 - Keep track of all licenses that relate to IP, whether software or licensed technology.
 - Ensure that employees are aware of and comply with license conditions in agreements related to third-party IP.
 - Don't copy third-party software unless it is explicitly allowed.
- Ensure that your employees know how to safely use open source software (OSS)
 - Inappropriate combination of company's own software with certain OSS could require company to publish source code of combination.
 - Licenses to be careful of include GPL, LGPL, Eclipse, and Mozilla.
 - Confirm that you are using OSS without known security vulnerabilities.
 - Confirm that you are using current versions of OSS.

5. Data Security and Privacy

- Know and be sure to comply with laws applicable to data security and privacy, especially health and medical data and PII.
- Protect confidential information and trade secrets from theft via external network and phishing attacks, as well as employee theft.

NEW ENTITY FORMATION RESOURCE LIST

1. Small Business Association Starting a Business Guide:

- [SBA: Business Guide](#)

2. Choosing Your Business Structure:

- [SBA: Choose a Business Structure](#)
- [IRS: Business Structures](#)

3. Registering Your Business:

- [SBA: Register your Business](#)

4. Getting State and Federal Tax ID Numbers:

- [SBA: Federal and State Tax ID Numbers](#)
- [IRS: Employer ID Numbers](#)

5. IRS Starting a Business Checklist:

- [IRS: Starting a Business](#)

EMPLOYMENT CONSIDERATIONS RESOURCE LIST

1. Independent Contractors Versus Employees (Federal Resources)

- [IRS: Independent Contractor \(Self-Employed\) or Employee?](#)
- [IRS: Understanding Employee vs. Contractor Designation](#)

2. Hiring Your First Employees (Federal Resources)

- Federal I-9 Work Authorization Form
 - [USCIS: I-9, Employment Eligibility Verification](#)
- Federal W-4 Tax Withholding Form
 - [IRS: About Form W-4, Employee's Withholding Certificate](#)
- Minimum wage
 - [DOL: Wages](#)
- Overtime wage
 - [DOL: Overtime Pay](#)
- Mandatory notices and posters
 - [DOL: Fair Labor Standards Act \(FLSA\) Minimum Wage Poster](#)
 - [EEOC: "EEO is the Law" Poster](#)
 - [DOL: Family and Medical Leave Act \(FMLA\) Poster](#)
 - [OSHA: Job Safety and Health | It's the Law Poster](#)
 - [DOL: Your Rights Under USERRA Poster](#)
 - [DOL: Employee Polygraph Protection Act \(EPPA\) Poster](#)

3. Ongoing Legal Obligations and Costs (Federal Resources)

- Employee leave and accommodations
 - [DOL: Family and Medical Leave Act](#)
 - [DOL: Families First Coronavirus Response Act | Employee Paid Leave Rights](#)
 - [EEOC: The ADA | Your Responsibilities as an Employer](#)

INTELLECTUAL PROPERTY RESOURCE LIST

1. Types of Intellectual Property

- Trademarks (business names, logos, and slogans).
- Copyrights (artistic creations and writings in general).
- Trade Secrets (company secrets).
- Patents (inventions).
- Domain names.

2. Trademark Links

- Search for FREE at [USPTO's Trademark Electronic Search System \(TESS\)](#).
- Also consider checking for available domain name.
- [Registration as low as \\$225 per class of goods/services if filed online \(TEAS\)](#)
- You can use ® symbol for registered trademark.
- You can use ™ symbol for unregistered trademark.

3. Copyright Link/Info

- [Copyright Registration](#): \$55 if filed online (\$35 if it is only one work by one author).
- Common law protection is automatic. You can use © symbol even if not registered.
- You can register up to 10 distinct works in one filing.

4. Patent Links

- [Information on patent searching from US Patent Office](#)
- [Search US patents at US Patent Office](#)
- [Google Patents](#)

5. Domain Name Registration

- [ICANN: Information for Domain Name Registrants](#)
- [List of ICANN-Accredited Registrars](#)

6. Legal Assistance Is Available from Various Sources, Including

- [Lawyers Committee for Civil Rights \(LCCR\) provides Legal Services for Entrepreneurs \(LSE\)](#)
- LCCR has clinics, typically the second Thursday of each month in Oakland, California, from 5-7 p.m.

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At Morgan Lewis, we're always ready to respond to the needs of our clients and craft powerful solutions for them.

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PPP ROUND 2

UPDATES TO THE PAYCHECK PROTECTION PROGRAM

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CORONAVIRUS COVID-19

ADDRESSING TODAY'S CRISIS, TOMORROW'S LEGAL CHALLENGES

As the coronavirus COVID-19 crisis rapidly evolves, global companies are looking for resources to protect their people and their businesses. Morgan Lewis lawyers are providing guidance on healthcare provider issues, business supply chain disruption, data privacy concerns, employer questions, energy and environmental industry ramifications, financial services guidelines, immigration status requirements, life sciences protocols, tax implications, and ongoing government guidance from around the world.

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CARES ACT & CONSOLIDATED APPROPRIATIONS ACT

- The CARES Act, passed in March 2020, included the Keeping Workers Paid and Employed Act, which provided paycheck protections and loan forgiveness, and small business contracting relief.
- The Consolidated Appropriations Act, 2021 (CAA), passed in December 2020, is a \$2.3 trillion spending bill that includes \$900 billion for coronavirus (COVID-19) pandemic relief, ~\$285 billion of which is dedicated to the extension and expansion of the Paycheck Protection Program (PPP).
- The new relief package revives the PPP with ~\$285 billion, reopening and strengthening the program for first-time and second-time borrowers, and extending the lifetime of the program to March 31, 2021.

LANDSCAPE OF PPP ROUND 2

- The new iteration of the program targets support to smaller and minority-owned businesses that may have struggled to gain access to PPP funds during the first iteration of the program:
 - Allocates \$15 billion each to (1) community lenders and (2) small depository lenders for initial PPP loans and PPP second draws.
 - Earmarks \$35 billion for first-time borrowers, \$15 billion of which is to fund loans for smaller, first-time borrowers with 10 or fewer employees or loans of less than \$250,000 in low-income areas.
 - Apportions \$25 billion for second-draw PPP loans for smaller borrowers with 10 or fewer employees or loans of less than \$250,000 in low-income areas.
- The Small Business Administration (SBA) announced that new, first-time PPP loans are available starting on **Monday, January 11** *only for community financial institutions*. The PPP will open to all participating lenders shortly thereafter. (Note: Second-draw PPP loans will be available from community financial institutions beginning on Wednesday, January 13.)
- PPP loan funds will be available on a first-come, first-served basis.

EXPANSION OF PPP: FIRST-TIME PPP vs. PPP SECOND DRAW

	FIRST-TIME PPP LOANS	PPP SECOND DRAWS
Eligibility Requirements	<ul style="list-style-type: none"> No more than 500 employees Affiliation rules 	<ul style="list-style-type: none"> No more than 300 employees Affiliation rules Have used, or plan to use, the full amount of original PPP loan 25% reduction in revenue in first, second, or third quarter of 2020 relative to the corresponding 2019 quarter (can use fourth quarter of 2020 if application submitted on or after 1/1/2021)
Maximum Loan Amounts	<ul style="list-style-type: none"> \$10 Million 	<ul style="list-style-type: none"> \$2 Million
Tax Treatment	<ul style="list-style-type: none"> Loan forgiveness is nontaxable Business expenses paid with first-time PPP loan funds will be tax deductible 	<ul style="list-style-type: none"> Loan forgiveness is nontaxable Business expenses paid with PPP second-draw funds will be tax deductible
Forgiveness Requirements	<ul style="list-style-type: none"> 60%/40% cost allocation between payroll and non-payroll costs 	<ul style="list-style-type: none"> 60%/40% cost allocation between payroll and non-payroll costs

FIRST-TIME PPP LOANS

- Loans up to \$10 million with a 1.00% interest rate.
- Loan amount: lesser of the \$10 million maximum and 2.5x the borrower's average monthly payroll for the last 12 months.
- Excludes compensation more than \$100,000.
- SBA guarantees 100% of the issued loans during the period of 2/15/2020 through 3/31/2021.
- Loan proceeds can cover payroll costs, group healthcare benefits, mortgage interest payments, rent, utilities, other debt interest, operations expenditures (e.g., software), property damage costs, supplier costs, and worker protection costs (e.g., PPE).

PPP LOANS LOAN FORGIVENESS

- Up to 100% loan forgiveness:
 - Borrowers receive full loan forgiveness if they spend at least 60% of their PPP loan on payroll costs over a period of their choosing (a “covered period”) between 8–24 weeks.
- Reductions in loan forgiveness for:
 - Greater than 40% used toward non-payroll costs
 - Reductions in head count
 - Reduction in salaries greater than 25%
- Forgiveness process

PPP LOANS: APPLYING FOR PPP

- **How to apply:**

- Apply through any existing SBA 7(a) lender or any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating.
- Other lending institutions may also be approved and enrolled in the program.
- The [application](#) (released 1/8/2021) contains two pages plus instructions.

PPP LOANS: APPLYING FOR PPP

- **Who can apply? These entities affected by COVID-19 may be eligible:**
 - Any small business concern that meets SBA's size standards (either the industry-based size standard or the alternative size standard).
 - Sole proprietors, independent contractors, and self-employed persons.
 - Any business with an NAICS Code that begins with 72 (Accommodations and Food Services) that has more than one physical location and employs less than 500 per location.
 - Any business, 501(c)(3) non-profit organization, 501(c)(19) veterans organization, or Tribal business concern (sec. 31(b)(2)(C) of the Small Business Act) with the greater of 500 employees, or that meets the SBA industry size standard if more than 500, and certain 501(c)(6) organizations.

PPP LOANS: THE APPLICATION PAGE 1

**Paycheck Protection Program
Borrower Application Form Revised January 8, 2021**

OMB Control No. 3245-0007
Expiration Date: 7/31/2021

Check One: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent Contractor <input type="checkbox"/> Self-Employed Individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(6) organization <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Housing cooperative <input type="checkbox"/> Tribal Business <input type="checkbox"/> Other		DBA or Tradename (if applicable)	Year of Establishment (if applicable)
Business Legal Name		NAICS Code	Applicant (including affiliates, if applicable) Meets Size Standard (check one): <input type="checkbox"/> No more than 500 employees (or 300 employees, if applicable) <input type="checkbox"/> SBA industry size standards <input type="checkbox"/> SBA alternative size standard
Business Address (Street, City, State, Zip Code - No P.O. Box addresses allowed)		Business TIN (EIN, SSN)	Business Phone
		Primary Contact	Email Address

Average Monthly Payroll:	\$	x 2.5 + EIDL (Do Not Include Any EIDL Advance) equals Loan Request Amount:	\$	Number of Employees:	
Purpose of the loan (select all that apply):	<input type="checkbox"/> Payroll Costs	<input type="checkbox"/> Rent / Mortgage Interest	<input type="checkbox"/> Utilities	<input type="checkbox"/> Covered Operations Expenditures	<input type="checkbox"/> Other (explain):
	<input type="checkbox"/> Covered Property Damage	<input type="checkbox"/> Covered Supplier Costs	<input type="checkbox"/> Covered Worker Protection Expenditures		

Applicant Ownership
List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

If questions (1), (2), (5), or (6) are answered "Yes," the loan will not be approved.

Question	Yes	No
1. Is the Applicant or any owner of the Applicant 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?		
2. Has the Applicant, any owner of the Applicant, 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 (a) currently delinquent, or (b) has defaulted in the last 7 years and caused a loss to the government?		
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management (including a management agreement) with any other business? If yes, list all such businesses (including their TINs if available) and describe the relationship on a separate sheet identified as addendum A.		
4. Did the Applicant receive 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.		
5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant presently incarcerated, or for any felony, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction? <i>Initial here to confirm your response to question 5 →</i>		
6. Within the last 5 years, for any felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance, or within the last year, for any other felony, has the Applicant (if an individual) or any owner of the Applicant (1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; or 4) commenced any form of parole or probation (including probation before judgment)? <i>Initial here to confirm your response to question 6 →</i>		
7. Is the United States the principal place of residence for all employees included in the Applicant's payroll calculation above?		
8. Is the Applicant a franchise?		
9. Is the franchise listed in the SBA's Franchise Directory? If yes, enter the SBA Franchise Identifier Code here:		

- Business type, address, name, year of establishment, NAICS code, and other contact and identifying information
- Whether the business meets the size standard (i.e., SBA industry standard, 500 employees for first-time, or 300 employees for second-time)
- Monthly payroll information and number of employees
- Purpose of the loan (payroll costs, rent/mortgage interest, utilities, covered operations expenditures, covered property damage, covered supplier costs, covered worker protection expenditures, or other)
- List of all owners of 20% or more of the equity of the applicant
- Questions regarding borrower reliability, credit history, and legal history
- Whether the business received an EIDL loan between 1/31/20 and 4/3/20 (note: nuanced situation)
- Principal place of business (i.e., United States)
- Whether the applicant is a franchise that is listed in the SBA's Franchise Directory

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PPP LOANS: THE APPLICATION PAGE 2 (CERTIFICATIONS)

By Signing Below, You Make the Following Representations, Authorizations, and Certifications
I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) and the Department of the Treasury (Treasury) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the Paycheck Protection Program Rules).
- The Applicant, together with its affiliates (if applicable), (1) is an independent contractor, self-employed individual, or sole proprietor with no employees; (2) if not a housing cooperative, eligible 501(c)(6) organization, or eligible destination marketing organization, employs no more than the greater of 500 employees or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for the Applicant's industry; (3) if a housing cooperative, eligible 501(c)(6) organization, or eligible destination marketing organization, employs no more than 300 employees; (4) if NAICS 72, employs no more than 500 employees per physical location; (5) if a news organization that is majority owned or controlled by a NAICS code 511110 or 5151 business or a nonprofit public broadcasting entity with a trade or business under NAICS code 51110 or 5151, employs no more than 500 employees (or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for the Applicant's industry) per location; or (6) is a small business under the applicable revenue-based size standard established by SBA in 13 C.F.R. 121.201 for the Applicant's industry or under the SBA alternative size standard.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rules including the prohibition on using loan proceeds for lobbying activities and expenditures. If Applicant is a news organization that became eligible for a loan under Section 317 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, proceeds of the loan will be used to support expenses at the component of the business concern that produces or distributes locally focused or emergency information.
- I understand that SBA encourages the purchase, to the extent feasible, of American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any EIDL loan received by the Applicant (Section 7(b)(2) of the Small Business Act) between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses for loans under the Paycheck Protection Program Rules.

For Applicants who are individuals, 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.

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

- The Applicant was in operation on February 15, 2020, has not permanently closed, and was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees, or had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- 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 payments for mortgage interest, rent, utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures as specified under the Paycheck Protection Program Rules; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.
- I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, covered utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures, and not more than 40% of the forgiven amount may be for non-payroll costs. If required, the Applicant will provide to the Lender and/or SBA documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of eligible expenses for the covered period following this loan.
- The Applicant has not and will not receive another loan under the Paycheck Protection Program, section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) (this does not include Paycheck Protection Program second draw loans, section 7(a)(37) of the Small Business Act (15 U.S.C. 636(a)(37))).
- The Applicant has not and will not receive a Shuttered Venue Operator grant from SBA.
- The President, the Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person as determined under applicable common law, does not directly or indirectly hold a controlling interest in the Applicant, with such terms having the meanings provided in Section 322 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.
- The Applicant is not an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).
- I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 U.S.C. 1001 and 371 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. 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 U.S.C. 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 confirm the eligible loan amount using required documents submitted. I understand, acknowledge, and agree that the Lender can share any tax information that I have provided 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 Applicant

Print Name

Date

Title

- Confirm business was in operation on February 15, 2020
- Necessity:
 - Borrowers must take 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."
 - It is unlikely that a company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to the SBA, upon request, the basis for its certification. This certification and all other aspects of a PPP application carry significant fraud risk.
- Use of funds (i.e., to retain workers and maintain payroll or to make payments for approved expenditures (see slide 19))
- Promise to provide lender with required documentation verifying employees, payroll costs, and other allowable costs
- For initial PPP loans, cannot have already received a PPP loan (note: companies may now be eligible for PPP second draws, subject to requirements)
- Acknowledgement of 60%/40% payroll costs and non-payroll costs allocation rule for forgiveness
- Applicant cannot be a public company ("issuer")
- Applicant cannot also receive a Shuttered Venue Operator grant
- Truth and accuracy of information

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PPP LOANS: MATERIALS NEEDED TO APPLY

- When applying for a PPP loan, lenders will typically ask for all or some of the following materials:
 - Copies of government-issued IDs or Passports (for individual controlling parties and beneficial owners)
 - Tax documentation (e.g., executed W-9s)
 - Organization chart (showing ownership structure)
 - Evidence of formation (e.g., articles of incorporation/operating agreements/partnership agreements, good standing certificates, bylaws, unexpired business licenses)
- Lenders will also require that borrowers complete a Know-Your-Customer (KYC) or Customer Identification Program (CIP) Questionnaire, which typically involves answering questions about the following:
 - Name, address, and other identifying information
 - Entity type
 - Nature of business
 - Annual revenue
 - Controlling party information

PPP LOANS: LOAN AMOUNT CALCULATION, NO EMPLOYEES

- **Calculation Steps:**

- Step 1: Find your **2019 or 2020 IRS Form 1040 Schedule C line 31 net profit amount** (discussed on upcoming slide).
 - ❑ If you are using 2020 to calculate payroll costs and have not yet filed a 2020 return, fill it out and compute the value.
 - ❑ If this amount is more than \$100,000, reduce it to \$100,000. If this amount is zero or less, you are not eligible for a PPP loan.
- Step 2: Calculate the average monthly net profit amount (divide the amount from Step 1 by 12).
- Step 3: Multiply the average monthly net profit amount from Step 2 by 2.5.
- Step 4: Add the outstanding amount of any Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance.
 - ❑ Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

- **Important Guidance:**

- You need to submit a Schedule C to qualify for a PPP loan:
 - ❑ You must provide the Form 1040 Schedule C (whichever year's form you used for the calculation) with your PPP loan application to substantiate the applied-for PPP loan amount and an IRS Form 1099-MISC detailing nonemployee compensation received, invoice, bank statement, or book of record that establishes that you are self-employed.
- If you are using 2020 to calculate the loan amount, this is required regardless of whether you have filed a 2020 tax return with the IRS. You must provide a 2020 invoice, bank statement, or book of record to establish you were in operation on or around February 15, 2020.

PPP LOANS: LOAN AMOUNT CALCULATION, W/ EMPLOYEES

- **Calculation Steps:**

- Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding the following:
 - ❑ Your **2019 or 2020 Form 1040 Schedule C (discussed on upcoming slide) line 31 net profit amount** (if you are using 2020 and have not yet filed a 2020 return, fill it out and compute the value), up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, if this amount is more than \$100,000, reduce it to \$100,000, if this amount is less than zero, set this amount at zero;
 - ❑ 2019 or 2020 gross wages and tips paid to your employees whose principal place of residence is in the United States computed using 2019 or 2020 IRS Form 941 Taxable Medicare wages & tips (line 5c- column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips; subtract any amounts paid to any individual employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred and any amounts paid to any employee whose principal place of residence is outside the United States; and
 - ❑ 2019 or 2020 employer contributions to employee group health, life, disability, vision and dental insurance (portion of IRS Form 1040 Schedule C line 14 attributable to those contributions); retirement contributions (Form 1040 Schedule C line 19); and state and local taxes assessed on employee compensation (primarily under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms).
- Step 2: Calculate the average monthly amount (divide the amount from Step 1 by 12).
- Step 3: Multiply the average monthly amount from Step 2 by 2.5.
- Step 4: Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance.
 - ❑ Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

- **Important Guidance:**

- You need to submit a Schedule C to qualify for a PPP loan:
 - ❑ You must supply your 2019 or 2020 (whichever you used to calculate the loan amount) Form 1040 Schedule C, Form 941 (or other tax forms or equivalent payroll processor records containing similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever you used to calculate the loan amount) or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions, if applicable.
- A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.

PPP LOANS: FORM 1040 SCHEDULE C

SCHEDULE C
(Form 1040)

Profit or Loss From Business
(Sole Proprietorship)

OMB No. 1545-0074
2020
Attachment
Sequence No. 09

Department of the Treasury
Internal Revenue Service (IRS) ▶ Go to www.irs.gov/ScheduleC for instructions and the latest information.
▶ Attach to Form 1040, 1040-SR, 1040-NR, or 1041; partnerships generally must file Form 1065.

Name of proprietor: _____ Social security number (SSN) _____

A Principal business or profession, including product or service (see instructions) **B** Enter code from instructions

C Business name. If no separate business name, leave blank. **D** Employer ID number (EIN) (see instructions)

E Business address (including suite or room no.)
City, town or post office, state, and ZIP code

F Accounting method: (1) Cash (2) Accrual (3) Other (specify) ▶

G Did you "materially participate" in the operation of this business during 2020? If "No," see instructions for limit on losses Yes No

H If you started or acquired this business during 2020, check here ▶

I Did you make any payments in 2020 that would require you to file Form(s) 1099? See instructions Yes No

J If "Yes," did you or will you file required Form(s) 1099? Yes No

Part I Income

1 Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "statutory employee" box on that form was checked 1

2 Returns and allowances 2

3 Subtract line 2 from line 1 3

4 Cost of goods sold (from line 42) 4

5 Gross profit. Subtract line 4 from line 3 5

6 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions) 6

7 Gross income. Add lines 5 and 6 7

Part II Expenses. Enter expenses for business use of your home only on line 30.

8 Advertising 8

9 Car and truck expenses (see instructions) 9

10 Commissions and fees 10

11 Contract labor (see instructions) 11

12 Depletion 12

13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions) 13

14 Employee benefit programs (other than on line 19) 14

15 Insurance (other than health) 15

16 Interest (see instructions) 16

17a Mortgage (paid to banks, etc.) 17a

17b Other 17b

17c Legal and professional services 17c

18 Office expense (see instructions) 18

19 Pension and profit-sharing plans 19

20 Rent or lease (see instructions):
a Vehicles, machinery, and equipment 20a
b Other business property 20b

21 Repairs and maintenance 21

22 Supplies (not included in Part III) 22

23 Taxes and licenses 23

24 Travel and meals:
a Travel 24a
b Deductible meals (see instructions) 24b

25 Utilities 25

26 Wages (less employment credits) 26

27a Other expenses (from line 48) 27a

27b Reserved for future use 27b

28 Total expenses before expenses for business use of home. Add lines 8 through 27a 28

29 Tentative profit or (loss). Subtract line 28 from line 7 29

30 Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829 unless using the simplified method. See instructions.
Simplified method filers only: Enter the total square footage of (a) your home: _____ and (b) the part of your home used for business: _____ Use the Simplified Method Worksheet in the instructions to figure the amount to enter on line 30

31 Net profit or (loss). Subtract line 30 from line 29
• If a profit, enter on both **Schedule 1 (Form 1040), line 3**, and on **Schedule SE, line 2**. (If you checked the box on line 1, see instructions). Estates and trusts, enter on **Form 1041, line 3**.
• If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity. See instructions.
• If you checked 32a, enter the loss on both **Schedule 1 (Form 1040), line 3**, and on **Schedule SE, line 2**. (If you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on **Form 1041, line 3**.
• If you checked 32b, you must attach **Form 6198**. Your loss may be limited.

32a All investment is at risk.
32b Some investment is not at risk.

For Paperwork Reduction Act Notice, see the separate instructions. Call No. 11334P Schedule C (Form 1040) 2020

- Schedule C can be found here: <https://www.irs.gov/pub/irs-pdf/f1040sc.pdf>.
 - IRS instructions for Schedule C can be found here: <https://www.irs.gov/pub/irs-pdf/i1040sc.pdf>.
 - Principal business – provide the general field or activity and the type of product or service; also provide type of customer or client if relevant to wholesale/retail trade/services
 - Business name; employer identification number; business address; type of accounting method (cash, accrual, or other); and other identifying information
 - Income:
 - Gross receipts
 - Returns and allowances
 - Cost of goods sold (completed on pg. 2 of the form)
 - Gross profit = gross receipts – returns and allowances – cost of goods sold
 - Gross income = gross profit + other income (see instructions for specific "other income" that can be included)
 - Expenses:
 - Run through various expense types, by line item, and total these on line 28.
 - Net profit/loss:
 - Gross income – total expenses = tentative profit/loss
 - Net profit/loss = tentative profit/loss – expenses for business use of your home (see instructions for more information).
- Net profit/loss is included from Schedule C for the PPP loan application

SMALL BUSINESS ADMINISTRATION GUIDANCE

- 60% Payroll Costs Rule
- Partnerships (K-1 income)
- Affiliation Rules and Minority Shareholders
- \$100,000 Payroll Cost Threshold
- Professional Employer Organizations & Payroll Providers
- 12-Month Payroll Cost Calculation
- Size Atandards and "Affiliation"
- Necessity Certification

PPP LOANS RISKS

- The government will be watching how these funds are spent. The Act funds extensive oversight mechanisms to prevent and uncover fraud and waste.
- Even if you win, government investigations can be time-consuming, expensive, and intrusive.
- If you are investigated and lose, there are serious risks associated with any fraud in connection with these funds.

EXTENSION OF PPP: BORROWER ELIGIBILITY

- The PPP will be extended through March 31, 2021.
- First-time borrowers under the new PPP extension will be subject to the program's original eligibility rules (except for publicly traded companies).
 - Any entity that, together with its domestic and foreign affiliates, does not meet the 500-employee or other applicable PPP size standard is ineligible for a PPP loan. Please visit our [LawFlash on the first iteration of the PPP](#) for more information.
- A business organization not in operation on February 15, 2020 is **not eligible** for a PPP loan.

EXPANSION OF PPP: PPP SECOND-DRAW ELIGIBILITY

- Applicants must satisfy all of the following criteria:
 - Employ no more than 300 employees.
 - Note: Businesses with multiple locations that are eligible entities under the initial PPP requirements may employ no more than 300 employees per physical location in order to be eligible for a PPP second draw.
 - Have used, or plan to use, the full amount of their entity's original PPP loan.
 - Demonstrate at least a 25% reduction in revenue in the first, second, or third quarter of 2020 relative to the corresponding 2019 quarter. Applications submitted on or after January 1, 2021 may use revenue from the fourth quarter of 2020 compared to the same quarter in 2019 to satisfy eligibility.

EXPANSION OF PPP: PPP SECOND-DRAW LOAN AMOUNTS

- PPP second draws will have a maximum loan amount of \$2 million for each applicant entity.
- To calculate the amount of the PPP second draw, borrowers will receive the lesser of (1) an amount of up to 2.5x the average monthly payroll costs in one year prior to the loan or the calendar year, or (2) \$2 million.
 - Notable exception: Applicants in the accommodation and food services industries, as designated by the SBA, are eligible to receive a loan for the lesser of (1) 3.5x their average monthly payroll or (2) \$2 million.

EXPANSION OF PPP: PPP SECOND-DRAW LOAN FORGIVENESS

- Borrowers must allocate at least 60% of the PPP funds toward payroll costs (i.e., a 60%/40% cost allocation between payroll and non-payroll costs).
- Borrowers of a PPP second-draw loan are eligible for loan forgiveness equal to the sum of their payroll costs, as well as covered mortgage, rent, and utility payments; covered operations expenditures; covered property damage costs; covered supplier costs; and covered worker protection expenditures incurred during the covered period.
- Similar to the tax treatment for initial PPP loans, loan forgiveness on PPP second draws will be nontaxable, and business expenses paid with PPP second-draw funds will be tax deductible, all effective for tax years ending after the date of enactment of the associated provision of the bill.

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**CORONAVIRUS
COVID-19**

A microscopic image of a coronavirus particle, showing its characteristic spherical shape and surface spikes. The particle is rendered in shades of green and orange, set against a blurred background.

[VIEW OUR CORONAVIRUS COVID-19 RESOURCE PAGE >](#)

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COVID-19 ALERTS >](#)**

Updated: January 8, 2021

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Middle East

North America

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Almaty

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Brussels

Century City

Chicago

Dallas

Dubai

Frankfurt

Hartford

Hong Kong*

Houston

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Los Angeles

Miami

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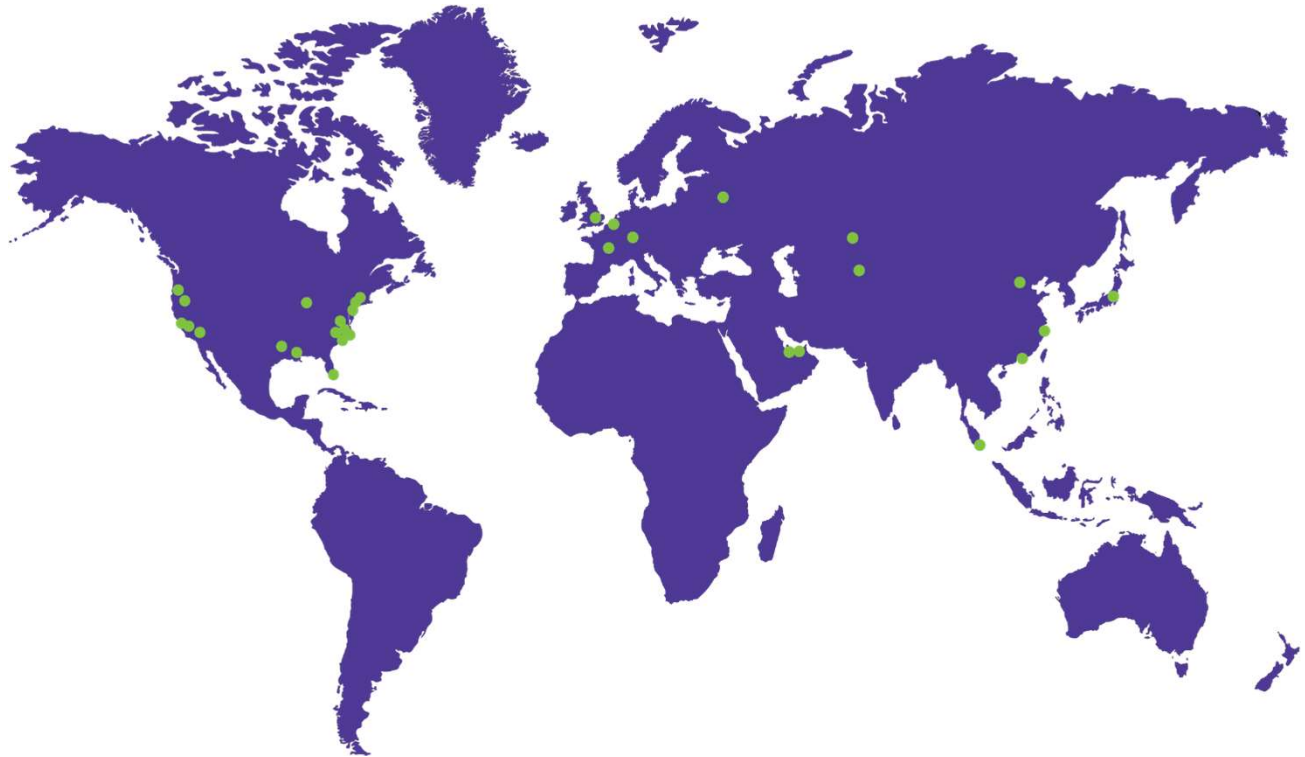
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