Wisconsin REALTORS® Association

THE FEDERAL CARES ACT AND RELATED COVID-19 INITIATIVES
FAQS
APRIL 3, 2020

PAYCHECK PROTECTION PROGRAM ("PPP") FORGIVEABLE LOANS

Paycheck Protection Program Forgivable Loans

The CARES Act created a new $349 billion Paycheck Protection Program ("PPP"), administered by the U.S. Small Business Administration ("SBA") and U.S. Department of Treasury ("Treasury"). The rules implementing the PPP were issued on April 2, 2020, and lenders will begin accepting applications soon.

- *Who can apply for these loans? Are the loans available to REALTORS®, brokers and firms?*
  - The loans are available to all small businesses with fewer than 500 people. The loans are also available to self-employed individuals and independent contractors.
  - <u>What this means for REALTORS®</u>: PPP loans will be available to REALTOR® brokerages as well as independent contractors or agents. However, brokerages and their independent contractor agents must apply separately with a lender, as discussed below.
- *What can the money be used for?*
  - Loans can be used to cover payroll costs, mortgage interest payments, rent, utilities, or interest on other existing debt obligations.
- *How much money can I borrow with a PPP loan?*
  - Applicants will receive a maximum loan amount of 2.5 times their average monthly payroll costs, capped at $10 million. No entity may obtain more than one PPP loan.
  - Payroll costs include salaries, wages, commissions, separation payments, payments for group health and retirement benefits, and payments of state or local employment taxes and compensation, but excludes compensation of an individual employee in excess of $100,000.
- *What are the Loan Terms and Conditions?*
  - All loans under the program will have identical features. The loans will have a 1.0% interest rate and maturity of 2 years. The first payment is deferred for six months, but interest will accrue during this time. The PPP loans are 100% guaranteed by SBA, and no collateral personal guarantees are required.

- What this means for REALTORS®: These loans may also be ***fully forgiven***, if used for qualifying purposes and the borrower meets the employment requirements discussed below.

- *When will the program be up and running?*

    - The SBA issued interim rules on April 2, 2020. SBA lenders will begin accepting loan applications [shortly/April 3, 2020/April 10, 2020.]

- *Where can I apply for a PPP loan?*

    - Loan applications must be submitted through an SBA lender. Check with your local bank or credit union. You can also find nearby eligible lenders here. You can find the Borrower Application Form here.

- *What is the timeline for applying?*

    - Lenders will begin accepting applications soon. The deadline to apply for a PPP loan is June 30, 2020, but there is a funding cap on the amount of loans available, and loans are available on a first-come, first-served basis. REALTORS® should apply as soon as possible.

- *Are the loans available to affiliated businesses? Our brokerage is affiliated with numerous others across the state. Will we each qualify for PPP loans?*

    - Yes, under certain circumstances. The Act allows affiliated businesses operating as a franchise that are assigned franchise identifier codes from the SBA to participate in the program. The SBA is expected to provide additional clarity regarding affiliate participation soon.

- *How will the loan forgiveness work?*

    - The loan may be forgiven if, over the eight-week period starting the date the loan is issued, the loan amount is spent on payroll and other costs like rent, mortgage interest or utilities.

- *Is complete loan forgiveness guaranteed?*

    - No, not necessarily. To obtain complete loan forgiveness, borrowers must use all of the loan proceeds for forgivable purposes ***and*** maintain consistent FTE employee count and payroll levels. If payroll costs or employee count drops, not all of the loan will be forgiven.

    - PPP loans will be forgiven if the funds are used to cover payroll costs, interest payments on mortgage loans or rent obligations, and utility payments. Borrowers should be aware that at least 75% of the PPP loan proceeds must be used for payroll costs to receive maximum forgiveness.

- *How can we be sure to maintain employee and compensation levels to receive maximum forgiveness?*

    - Borrowers must maintain consistent payroll costs and employee counts when comparing the end of the eight-week period after loan origination with the base period.

    - Borrowers may choose from one of two "base periods" to determine their base level of employment: February 15, 2019 to June 30, 2019, or January 1, 2020 to February 29, 2020.

    - If the average number of FTEs per month during the eight-week period following loan origination remains the same as the base period, a borrow may receive complete loan forgiveness for that amount. If the average number of FTEs during the eight-week period following loan origination is less than the base period, then that percentage decline in employment applied to the loan will not be forgiven.

- *Can I make salary reductions for employees and still maintain eligibility for complete loan forgiveness?*

    - Yes, so long as the salary or wage reduction is less than 25%. If salary or wage reductions for employees are in excess of 25%, the amount of loan forgiveness will be reduced. This limitation applies to employees with an annualized rate of pay of less than $100,000.

- *What if I have already laid off employees or cut salaries by more than 25%? Can I bring them back to ensure I receive maximum loan forgiveness?*

    - Yes. The CARES Act allows employers to rehire employees or adjust salaries before June 30, 2020, and still receive full loan forgiveness.

- *How do I obtain loan forgiveness?*

    - Businesses must submit an application to their lender certifying the funds were used in compliance with the program and providing supporting documentation, including payroll-related information to verify FTE count and pay rates and mortgage, lease and utility payments.

    - <u>What this means for REALTORS®:</u> Be sure to keep documentation demonstrating that PPP loan proceeds were used in compliance with the program and that demonstrating payroll costs during the covered period. Lenders will rely on documentation provided by borrowers to determine loan forgiveness.

EXAMPLES

- *Our brokerage relies on employees and independent contractors. When filing for the PPP loans, how will we calculate our payroll costs, and how much can we expect to receive?*

    - For brokerages, payroll costs will be determined based on any administrative or corporate employees. The aggregate payroll costs will be determined from the last 12 months. Employers such as brokerages must also exclude any portion of a salary or wages in excess of $100,000.

    - As employers, brokerages must exclude any payroll costs associated with independent contractors. Independent contractors have the ability to apply for a PPP loan on their own and do not count for purposes of brokerages' PPP loan calculation.

    - Example 1: A brokerage has no employees making more than $100,000.

        - Annual payroll: $120,000
        - Average monthly payroll: $10,000
        - Multiply by 2.5 = $25,000
        - ***Maximum loan amount is $25,000***

    - Example 2: Some employees make more than $100,000

        - Annual payroll: $1,500,000
        - Subtract compensation amounts in excess of an annual salary of $100,000: $1,200,000
        - Average monthly qualifying payroll: $100,000
        - Multiply by 2.5 = $250,000
        - ***Maximum loan amount is $250,000***

    - <u>What this means for REALTORS®:</u> When applying for a PPP loan, small business brokerages must be sure to exclude commissions paid to independent contractors. Independent contractors will file their own PPP loan application.

- *I am an independent contractor compensated primarily through commissions. Am I eligible for a PPP forgivable loan? How can I estimate the loan amount available to me? How are commissions treated?*

    - Yes! The SBA directs that independent contractors should apply for their own loan. Payroll costs are based on wages, commissions, income, or net earnings from self-employment or similar compensation. REALTORS® should identify this compensation for the previous 12 months.

    - Individual applicants will be required to submit documentation to establish eligibility, including payroll tax filings reported to the IRS, Forms 1099-MISC, and income and expenses.

- Example 1: Independent contractor with annual wages, commissions, income or net earnings of $60,000.

    - Annual payroll: $60,000
    - Average monthly payroll: $5,000
    - Multiply by 2.5 = $12,500
    - ***Maximum loan amount is $12,500***

- <u>What this means for REALTORS®:</u> REALTORS® should identify commissions received in the previous year and work with their lender to ensure these amounts are properly reflected in the loan application.

- *I sell real estate part-time but also have a second job where I work as an employee for another company. Am I still eligible for the PPP?*

    - Yes, however when you file for a PPP loan, your payroll costs will only reflect your income as an independent contractor. Salary, wages or income received from your second job will be excluded from your PPP loan calculation but will appear on any application submitted by that employer.

- *Where can I get more information?*

    - Contact your local SBA lender. You can also review the Interim Final Rule, Application Form, and other materials at the SBA website.

- *Are other programs available if I obtain a PPP loan?*

    - Emergency Economic Injury Grants and Economic Injury Disaster Loans (EIDL) recipients and those who receive payment relief through the Small Business Debt Relief Program may apply for and receive a PPP loan ***provided*** there is no duplication in the uses of funds.

    - However, any Emergency Economic Injury Grant received by a borrower will be subtracted from the amount forgiven under the PPP loan.

ECONOMIC INJURY DISASTER LOANS AND GRANTS

Businesses adversely affected by COVID-19 may also apply for low-interest Economic Injury Disaster Loans ("EIDLs") administered by the SBA. As part of the application for these loans, businesses will receive a $10,000 advanced grant that may be spent on certain expenses.

What is an SBA EIDL?

- These are low-interest loans for small businesses that experience an economic hardship as the result of a declared disaster. Unlike other disaster loan programs, they do not require physical damage to a business.

Who is eligible for an EIDL?

- EIDLs are available to any small business or business with 500 or fewer employees that experience economic hardship because of COVID-19. Sole proprietors, independent contractors are also eligible.

What size loans are available? Are these loans forgivable?

- Eligible business can receive loans of up to $2 million based on their working capital needs. However, these loans are not forgivable.

What are the terms of the EIDLs?

- EIDL terms are for 30 years, and interest rates are capped at 3.75% for small businesses. The first month's payments are deferred a full year from the date of the promissory note.

- EIDLs can be approved by the SBA based on an applicant's credit score alone. Loans less than $200,000 are not required to have a personal guarantee.

What about the EIDL Grants?

- Businesses applying for an EIDL and harmed by COVID-19 will also receive an emergency advanced grant of $10,000. These advanced grants do not need to be repaid.

May I obtain an EIDL Grant and a PPP Forgivable Loan?

- Businesses may apply for EIDLs/EIDL grants and PPP loans. However, any EIDL emergency grant will be subtracted from the amount forgiven in the PPP loan.

- Additionally, EIDLs may not be used for the same purpose as a PPP loan. The loans may, however, be used to cover different costs, including the same category of costs incurred at different times.

WHAT IS THE PANDEMIC UNEMPLOYMENT ASSISTANCE PROGRAM?

The CARES Act created a new Pandemic Unemployment Assistance ("PUA") program expanding unemployment benefit eligibility to business owners, self-employed workers and independent contracts. REALTORS® unable to work due to the pandemic may now be entitled to PUA benefits even if they are not eligible for ordinary unemployment insurance. While the program is still being implemented, these Q&As outline what we know now.

How do states take advantage of the program?

- The program will be administered through the Wisconsin Department of Workforce Development ("DWD"). States must also execute agreements with the U.S. Department of Labor. Wisconsin has not yet signed an agreement with the federal government but is expected to do so in the coming days and weeks.

- For states that agree to waive the normal seven-day waiting period, the federal government will pay the full cost of the first week of benefits. In Wisconsin, Gov. Evers has asked the legislature to waive the waiting period, but the legislature has not yet acted.

What individuals qualify for the PUA?

- The applicant must provide a self-certification that the individual is otherwise able and available to work but is unemployed or partially unemployed as a direct result of the COVID-19 public health emergency.

- To qualify for the PUA, an applicant's unemployed status must be a direct result of COVID-19. This includes situations where the applicant has been diagnosed with COVID-19, has a household member diagnosed with COVID-19, is unable to reach the place of work because of a quarantine, had their work closed due to COVID-19, had to quit their job because of COVID-19, or has a child unable to attend school or daycare as a direct result of COVID-19.

Will individuals engaged in telework be able to qualify for PUA? Does this include REALTORS®?

- The CARES Act provides that individuals able to do telework with pay and those receiving paid sick leave or other paid leave benefits are ineligible for PUA.

- <u>What this means for REALTORS®:</u> The WRA firmly believes REALTORS® qualify for PUA. While REALTORS® can complete certain job functions through telework, that work is not done "with pay" as contemplated by the CARES Act. In the coming days, the WRA and the NAR will work with state and federal regulators to ensure REALTORS® adversely affected by COVID-19 have access to the PUA.

Does the CARES Act allow a self-employed individual to receive unemployment benefits? What about under PUA?

- Yes. Self-employed individuals generally do not qualify to receive regular unemployment benefits. However, the CARES Act expands eligibility to this benefit through the PUA. Under PUA, a self-employed worker, independent contractor or freelancer will be able to receive the weekly benefit amount determined under state law as well as the $600 a week under the PUA. In Wisconsin, this amount is expected to be $970.

How do self-employed individuals qualify for the PUA?

- The self-employed individual must certify that the he or she is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits and satisfies one of the conditions listed above.

What is the current weekly benefit in Wisconsin? How will that benefit change once the PUA is implemented?

- Wisconsin's maximum weekly benefit is currently $370. The CARES Act provides a lump sum of $600, funded by the federal government, that will be added to employees' maximum weekly benefit through December 31, 2020. This brings the total benefit for bringing the total benefit to $970.

For how long will this added federal benefit be available?

- An additional 13 weeks of extended unemployment benefits (for a total of 39 weeks in Wisconsin) are available for employees unemployed or underemployed due to certain COVID-19-related reasons. These extended benefits are available to employees who have exhausted or are otherwise ineligible for regular unemployment benefits, and self-certification requirements apply. Extended benefits are not available to employees who are able to telework or who are receiving other paid leave from their employer.

Will REALTORS® engaged in partial employment or operating under reduced business activity be eligible for PUA? Will REALTORS® engaged in telework be eligible for PUA?

- PUA benefits are available to eligible individuals who are "partially employed." Under Wisconsin law, the Work-Share program allows employees to continue working with reduced hours and receive a pro-rated unemployment benefit. Currently, the Work-Share program does not apply to independent contractors or sole proprietors.

- What this means for REALTORS®: REALTORS® should watch for additional guidance on PUA eligibility while they continue to operate under reduced business activity created by the COVID-19 pandemic. In the meantime, track your total hours worked and make a good faith estimate regarding the percentage of time worked during a traditional workweek. REALTORS® should keep a log and watch for additional guidance.

Will an employer's unemployment taxes increase because an employee receives unemployment benefits related to COVID-19 business shutdown?

- Unemployment benefits are proportionately charged to each employer based on weeks worked and wages earned in each individual's base period. Contributory employers could see an increase in their tax rate, which would result in higher taxes. Reimbursable employers would be charged dollar for dollar for benefits paid, which could result in higher than expected unemployment costs.

When can I apply?

- Individuals will apply through the Wisconsin Department of Workforce Development. However, before applications can be submitted, the State of Wisconsin will have to enter into an agreement with United States Secretary of Labor.

- To fully utilize federal funding, Wisconsin must also amend state law to eliminate the one-week waiting period that currently exists. Gov. Evers has proposed legislation that will eliminate the waiting period, and it is likely the Wisconsin Legislature will consider this provision (and many others) in the weeks ahead.

WHAT IS THE FFCRA AND HOW DOES IT AFFECT REALTORS®?

The Families First Coronavirus Response Act ("FFCRA") was signed into law on March 18, 2020. The FFCRA expands access to paid sick leave and paid family leave related to the COVID-19 pandemic. Additional guidance is forthcoming from the U.S. Department of Labor, but here is what we know now:

- *What changes does the FFCRA make to paid sick leave?*
    - The act temporarily requires most U.S. employers to provide paid sick leave to employees for certain COVID-19-related reasons. Full-time employees are entitled to up to 80 hours of paid leave for specific reasons related to COVID-19. Part-time employees are entitled to paid leave up to the average number of hours they work in a two-week period.
- *What changes does the FFCRA make to paid family leave?*
    - The act also expands the Family and Medical Leave Act ("FMLA") to require paid leave to care for a child as a result of school or childcare closings due to a public health emergency.
- *What costs must employers pay for the FFCRA?*
    - While employers are responsible for funding the paid leave, employers will be able to take tax credits for the paid leave provided to employees under the FFCRA.
- *What else is required of employers?*
    - Employers are also required to post employee rights information on their premises. A copy of the notice is available here, and FAQs regarding the notice are available here.
- *What employers are covered by the FFCRA?*
    - The FFCRA applies to most employers with fewer than 500 employees. This means that real estate brokerages with employees will be subject to the FFCRA.
- *Are any employers exempted from the FFCRA?*
    - The FFCRA provides a small business exemption for businesses with fewer than 500 employees, if they can demonstrate providing child care-related paid sick leave and extended family and medical leave would jeopardize the viability of the business as a going concern. The Department is developing regulations to implement this standard.
- *How does the FFCRA affect independent contractor?*

- The act only applies to employment relationships and does not affect independent contractor relationships. Workers who are independent contractors under the Fair Labor Standards Act are not considered employees.

- What this means for REALTORS®: Brokerages will have to comply with the FFCRA for their employees, but these provisions will not apply to independent contractors.

- *When will the Department of Labor begin enforcing the FFCRA?*

  - The Department of Labor has indicated it will not bring enforcement actions against any employer prior to April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the act.

- *Where can I learn more about the FFCRA?*

  - The U.S. Department of Labor has provided an exhaustive list of FFCRA Questions and Answers available here.