

PPP Loan Insurance

Protection in Uncertain Times

The Paycheck Protection Program (PPP) provides a forgivable loan to small businesses to directly incentivize keeping workers on the payroll during the COVID-19 pandemic. The Small Business Administration (SBA) will forgive loan repayment so long as specific employee retention criteria are met and the funds are used for eligible expenses.

In these precarious times, retention of PPP funds is critically important to its recipients. Unfortunately, with a new program comes uncertain regulation. The SBA audit window is six years. If deemed an ineligible recipient, the recipients of PPP loan proceeds may have to return the loan (partially or in whole), with interest, or pay fines and penalties. Defense costs will be incurred if a recipient's eligibility is challenged. A loan recipient may also be exposed to a private or governmental lawsuit seeking treble damages (and attorneys fees) pursuant to the False Claims Act if their loan application certifications made to the United States are challenged.

The contingent liability insurance marketplace has crafted a policy solution available to PPP loan recipients to protect against an adverse loan eligibility decision by the SBA or any other government body.

Coverage:

Insurance coverage responding to a successful challenge by the SBA or other government authority of a loan recipient's eligibility (necessity attestation or affiliation attestation) made in the application process. Coverage does not extend to losses resulting from the recipient's use of the loan or fraud.

Typical Terms:

Limit: Loan amount including applicable interest, fines and penalties (to the extent insurable). Defense costs are also contemplated.

Retention: \$200,000+

Premium: 3-5% of the limit of liability.

Policy Term: Coincides with the 6-year audit period

Underwriting Fee: ~\$30,000, in addition to the premium

Preparing a Submission:

Insurance carriers will consider submissions from applicants who accepted and intend to retain a loan of at least \$2mm. Candidates for insurance must be more certain than not that they were eligible for the PPP.

Helpful Submission Materials :

- ✓ Named Insured
- ✓ Type of business, including NAIC code
- ✓ Loan application and workbook completed for the PPP
- ✓ Most recent financial statements
- ✓ Documentation provided in the loan application to support the necessity certification
- ✓ If applicable, documentation supporting the affiliation certification