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Program Guidelines for Private Sector Payroll Protection Program (PPN)

By: Héctor Luna-Lugo

The Coronavirus, Aid, Relief and Economic Security (“CARES”) Act created the Coronavirus Relief Fund (“CRF”) for the benefit of all the states and territories of the United States of America. In the case of Puerto Rico, the United States Department of Treasury assigned \$2.2 billion to cover the necessary expenses incurred due to the COVID-19 pandemic as long as the expenses were not budgeted by March 27, 2020 and are incurred between March 1, 2020 and December 31, 2020.

The Governor of Puerto Rico (“Governor”) issued the Executive Order OE-2020-40 to implement the Strategic Disbursement Plan (the “Plan”) which provides how the funds received from the CRF will be used. The Plan established several programs to use the funds provided by the CFR. Among those programs is the Payroll Protection Program (by its Spanish acronym “PPN”) which was allocated \$350,000,000 of the CFR. The PPN objective is providing economic assistance to cover payroll expenses for private sector employers that (1) suffered an income reduction due to the business interruption caused by the lockdown orders as decreed by the Governor due to the COVID-19 pandemic and (2) continued paying the payroll to employees despite these interruptions.

On August 28, 2020, the Committee for the Supervision and Disbursements of the Coronavirus Relief Fund approved the guidelines for the PPN. Upon such approval, the

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Puerto Rico Department of Treasury (“PR Treasury”) issued the Circular Letter of Internal Revenue 20-38 (“CC IR 20-38”) to establish the requirements and procedures to request the PPN pursuant to its guidelines and the Plan.

Eligible Business Requirements

The PPN guidelines require businesses to:

- be a private employer (including not-for-profit entities) with no more than 500 employees (Employees being those which compensation is reported on Form 499-R2/W-2PR);
- have annual gross income (volume of business) that does not exceed \$10,000,000;
- have been in operation as of March 15, 2020 with at least one (1) employee for whom it paid salaries and payroll taxes;
- be duly registered in the Merchants’ Registry of the PR Treasury and have a valid Merchant Registry Certificate;
- have incurred or plan to incur (no later than December 30, 2020) in necessary expenses related with the COVID-19 emergency and maintain documentation that reliably demonstrate those expenses;
- commit to abiding by the terms and conditions of the PPN, including documentation and auditing requests;
- agree to return the funds, if it is determined that the employer did not comply with any of the eligibility requirements or if the funds were not spent on eligible expenses by December 30, 2020;
- if the business have received other funds for COVID-19 related assistance, confirm that the funds received under the PPN will be used to cover expenses related to the emergency that have not been covered by other assistances received or pending to be received and will not be included in other assistance applications; and
- agree and certify to remain in operations for a period of not less than eight (8) weeks after receipt of funds from the PPN and maintain the same employment levels as informed on the PPN application.

Eligible Expenses

The PPN funds should be used to cover “Eligible Expenses” for payroll and compensation paid to employees (incurred between March 1 and December 30, 2020) in a period of no less than eight (8) weeks from the date that the funds were received. For these purposes “compensation” includes the following:

- salaries, commissions and other similar compensation;
- tips paid in cash or equivalent (based on employer’s records of past tips, or, in the absence of such records, a reasonable, good-faith employer estimate of such tips);
- payments for vacation, parental, family, medical or sick leave;
- group health care coverage and insurance premium payments made by the employer for the benefit of the employees; and
- employer’s contributions to retirement plans.

Ineligible Expenses

The following are examples of expenses not eligible for the PPN, even though they may have been incurred by reason of the COVID-19 emergency:

- expenses that have been reimbursed or included as part of other claims (Federal, state or local) related with the COVID-19 emergency or private insurance compensation;
- compensation paid to employees whose principal place of residence is outside of the United States;
- compensation of an individual employee in excess of an annual salary of \$100,000, prorated to the PPN eight (8) weeks period;
- payroll tax payments;
- payment for sick or family leave, if payments were subject to certain credits provided by the “Families First Coronavirus Response Act”;
- bonuses and severance pay; and
- any other expense determined to be unnecessary for continued operations in the COVID-19 environment.

Calculation of the PPN amount

The factors to determine the amount of funds that will be received from the PPN are the following:

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1. Decline of Income: the decline of income of the business for the months of April, June and July 2020 in comparison with the same months for 2019;
2. Employee Amount: the number of active employees at the moment of the filing the application; and
3. Industry NAICS Code: the NAICS code in the Merchant’s Registration Certificate.

Generally, the computation of the PPN assistance will be as follows:

- **Step 1 – Compute Decline of Net Income**
Compute the decline of net income for the months of April, May and June 2020 from the months of April, May and June 2019, if any.
- **Step 2 – Reduce the Decline of Net Income by Assistance Funds Received**
Subtract certain assistance funds received from the Federal and Puerto Rico Government from the decline of net income computed in Step 1 to arrive to the qualified decline (e.g. the forgivable portion of the Paycheck Protection Program (“PPP”) loan and the portion not subject to repayment of the Economic Injury Disaster Loan

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("EIDL") granted by the U.S. Small Business Administration). If the amount of assistance funds received is equal or higher than the decline of net income computed in Step 1, the business will not qualify for the PPN.

- **Step 3 – Determine the Eligible Amount by the Decline in Income**
Multiply the qualified decline of income determined in Step 2 by the percentage rate provided by the PPN Guides based on the number of employees (with certain conditions).
- **Step 4 – Determine the Eligible Amount by Employees**
Multiply the amount of assistance provided by employee, based on the Industry NAICS Codes (see CC RI 20-38), by the number of employees (with certain conditions).
- **Step 5 – Determine the Amount of Economic Assistance under the PPN**
The amount of the assistance under the PPN will be the lesser of the amounts calculated under Step 3 (Eligible Amount by the Decline in Income) and Step 4 (Eligible Amount by Employees).

Application for the PPN

The PPN application must be completed through the Internal Revenue Unified System (known by its Spanish Acronym as "SURI"). As part of the application the business need to certify that this assistance will be used within the terms and conditions of the PPN guidelines.

Income Tax Reporting

The amount received for the PPN will be an income exclusion and will not be subject to income tax including the alternative minimum tax and the alternative basic tax applicable to corporations and individuals, respectively.

ATBA Comments

With the approval of the PPN certain businesses that have had interruptions in their operations but maintained at least one employee, may benefit from these funds. The interruption in the operations must be

evidenced by the reduction of income from 2019 to 2020 that may have not been compensated by certain other federal, state, or local assistance or private insurance.

The determination of the decline of income may not be that straightforward in certain instances including on how other assistances receive may influence the PPN. Additionally, there are certain additional requirements that businesses need to take into consideration after applying and receiving the funds of the PPN.

In our experience most of the businesses that received the PPP loan do not qualify for the PPN because the funds received from the PPP are higher than the factor of decline of income used to compute the PPN. However, certain business associations have requested a flexibilization of the PPN requirements so that more businesses may benefit from this program. We understand that the government is evaluating such requests.

If your business complies with the requirements for the PPN (as mentioned above), it should apply immediately as the funds will be disbursed in the order that the applications are received by the PR Treasury until the funds are exhausted.

At ATBA we have experienced personnel that can give you more details about this economic assistance, help you to determine if your business is eligible, with the calculation of the amount to be requested, and with the application process.

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