

PPP LOAN FORGIVENESS PROCESS

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Presenters



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Quick Overview of PPP...

- Enacted March 27, 2020 – CARES Act appropriated ~ \$350B for Paycheck Protection Program (“PPP”)
- Application process opened April 3, 2020
- ~ April 16, 2020 – PPP ran out of funding – ~ 1.6M loans issued
- April 24, 2020 – PPP and Health Care Enhancement Act added ~ \$310B of additional funding
- June 5, 2020 – PPP Flexibility Act brought in 24-week covered period, 60/40 rule, new FTE safe harbors, and other borrower-favorable rules
- July 4, 2020 – PPP Extension Act extended loan application deadline to August 8, 2020
- Application process now closed
- About 5.2 million PPP loans were issued ([SBA report](#) through 8/8/2020)
- ~ 87% of PPP loans are under \$150,000
- ~ 95% of PPP loans are under \$350,000
- August 10, 2020 – SBA started accepting loan forgiveness applications from lenders; many lenders are now accepting them from borrowers, but not all

Loan Forgiveness Applications

- **Loan Forgiveness Application [Form 3508](#) (Long Form)**
 - Default application for all borrowers who do not meet qualifications to utilize another form
 - Requires completion of Schedule A, which includes FTE and wage reduction calculations
- **Loan Forgiveness Application [Form 3508EZ](#) (EZ Form)**
 - Borrowers must certify they meet one of three options in order to qualify
 - Not required to submit FTE and wage reduction calculations
- **Loan Forgiveness Application [Form 3508S](#) (Simplified Form)**
 - Released 10/8/2020 - only for borrowers whose loan is \leq \$50,000 (and $<$ \$2M when combined with affiliates)
 - Headcount and salary reductions do not apply – SBA granted *de minimis* exemptions
 - Affects 3.57M of 5.2M loans, totaling about \$62B of the \$525B in PPP loans
- All forms require submission of supporting documentation, even Form 3508S
- Many borrowers are relying solely on payroll costs for simplicity

Loan Forgiveness Decision & Repayment

- **Lender/SBA requirements for decision –**
 - Lenders have 60 days from receipt of completed application to issue a decision to SBA
 - Only need to confirm borrower costs up to the requested loan forgiveness amount
 - Excess costs need not be reviewed
 - SBA then has 90 days to render a decision to the lender
- **Decision can be either –**
 - Approval in whole or in part
 - Denial
 - Denial without prejudice pending SBA review of the loan, but borrower can appeal
- **No payments of principal, interest and fees are due until the date the SBA issues decision to lender and remits the loan forgiveness amount**
 - If borrower does not apply for loan forgiveness, then the deferral period ends 10 months after the end of its CP
 - If forgiveness is denied by the SBA, then the deferral period ends to the extent repayment is due

Payroll Provider Reports

- Many borrowers rely on payroll reports from their payroll provider or professional employer organization (PEO)
- Borrowers need to be aware that these reports are not always accurate, even some reports from large, national organizations
- Common issues –
 - FTE calculation accurately includes time employees worked, but not the time employees did not work
 - Earnings codes are not always properly included/excluded, particularly for employers with large numbers of earnings codes
 - For example, some fail to include overtime codes, which understates payroll
 - Others include non-payroll codes (*e.g.*, mileage reimbursement), which overstates payroll

Loan Eligibility for Large Loans (\$2M+)

- SBA stated it will review loans of \$2M or more for eligibility as well as loan forgiveness
- SBA will review whether borrower had a good faith basis as of the loan application date to represent that current economic conditions made the loan necessary to support its ongoing business operations ([FAQ #31](#))
 - Loans under \$2M “will be deemed to have made the required certification concerning the necessity of the loan request in good faith” ([FAQ #46](#))
- Two new forms began circulating in late October, but nothing was posted on the Treasury or SBA websites
 - [Form 3509](#) (Loan Necessity Questionnaire – For-Profit Borrowers)
 - [Form 3510](#) (Loan Necessity Questionnaire – Non-Profit Borrowers)

Loan Eligibility (cont'd)

- **Business Activity Assessment**

- Gross revenue in Q2 2020 vs. Q2 2019
- Was borrower affected by a shutdown order?
- Has borrower significantly altered its operations?
- Did borrower begin any capital improvements between 3/13/2020 and the end of its CP?
- Catchall request for other information relevant to any question

- **Liquidity Assessment**

- Cash/cash equivalents on hand as of 3/31/2020
- Did borrower pay any dividends/distributions (other than pass-through estimated tax payments) between 3/13/2020 and the end of its CP?
- Did borrower prepay any outstanding debt (*i.e.*, before contractually due) between 3/13/2020 and the end of its CP?
- During the CP, were any employees or owners paid more than \$250,000 on an annualized basis? If so, to how many employees and what was the total amount paid?
- Was the borrower a public company as of the loan application date?
- Did a public company own 20% or more of borrower as of the loan application date?
- Was borrower 50%+ owned by another company as of the loan application date?
- Was borrower 20%+ owned by a private equity/venture capital/hedge fund as of the loan application date?
- Was borrower 50%+ owned by a foreign, state-owned enterprise?
- Did borrower receive any CARES Act funds other than the PPP (excluding tax benefits)?
- Catchall request for other information relevant to any question

Loan Eligibility (cont'd) & Disclosure

- Responses to the forms are due within 10 days of receipt– consider completing now in anticipation of receipt
- AICPA and others are reported to be submitting comments because the forms solicit information that occurs after the loan application date
- November 5, 2020 – U.S. District in DC considered FOIA requests from news organizations and issued 40-page memorandum opinion requiring SBA to disclose the names and loan amounts for all borrowers under PPP and EIDL loan programs
 - Previously, SBA issued aggregate data for loans under \$150K, and borrower names and ranges of loan amounts for loans above that amount

Economic Injury Disaster Loans

- EIDL loans are issued directly from the SBA – to help entities stay afloat during the declared disaster
- Terms: 30-year loan; up to \$2 million loan amount; 3.75% interest rate for businesses (2.75% for nonprofits); no prepayment penalty or fees; payments deferred for 1 year, but interest still accrues
 - Loan must be repaid – not forgivable like the PPP
- Use of proceeds: only for working capital and normal operating expenses (*e.g.*, payroll, accounts payable, continuation of health care benefits, rent, utilities, fixed debt payments)
 - Not for business expansion
- Collateral: required for loans over \$25,000; general UCC lien on designated business assets
- EIDL Advance: grant up to \$1,000 per employee (max \$10,000), even if EIDL is not approved
 - Grants no longer available unless new program funding is obtained
 - Grant does not need to be repaid, but it is includible in income and subject to tax
 - Grant is deducted from loan forgiveness amount under PPP loan

Tax Issues

- No tax consequences on receipt of PPP funds
- Generally, cancellation of debt (COD) income gives rise to taxable income for borrowers
- Section 1106(i) of the CARES Act provides that any amount that would be includible on the forgiveness of a PPP loan “shall be excluded from gross income”
- The CARES Act did not address the expense side of the equation, but the IRS did in [Notice 2020-32](#)

Tax Issues (cont'd)

- IRS stated that expenses related to loan forgiveness under a PPP loan are not allowable as deductions
- Unfortunately, the IRS did not directly address timing
- Authorities cited by IRS state that expense disallowance occurs in 2020, not 2021, even if loan forgiveness is not received until 2021
- Many legislators have stated that expense disallowance was not intended, and legislation has been proposed to restore the deductions (*e.g., S. 3612, the Small Business Expense Protection Act of 2020*)

Are Changes Coming?

- **Current Democratic proposal – the second version of bill that would be the HEROES Act**
 - Loan forgiveness would be tax-free – this would reverse legislatively the IRS position of expense disallowance
 - Second round of PPP –
 - Eligibility – limited to borrowers with 200 or fewer EEs (vs. 500 in first PPP)
 - Eligibility – borrowers must have suffered 25% reduction in gross revenue in Q1, Q2 or Q3 of 2020 vs. same quarter of 2019
 - Loan size – 250% of average monthly payroll costs up to \$2M (vs. \$10M in first PPP)
 - At least \$25B earmarked for businesses with 10 or fewer employees
 - Potential for expanded list of eligible nonpayroll costs (subject to 40% cap)
 - Would include nonpayroll costs such as PPE, expenses related to adapting work environments for social distancing guidelines, software/cloud computing services that facilitate important business functions, costs related to vandalism, looting or damage due to 2020 protests (to extent not covered by insurance)



QUESTIONS?

Contact Your Presenters



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