

PPP Forgiveness Check-In

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Disclaimer

This presentation is not intended to be tax or legal advice. This presentation is for informational purposes only. Businesses are not all the same and deal with unique situations. Please contact your tax professional or attorney before making any decisions.



Topics

- Overview/Recap
- Key Item Reminders
- Applying For Forgiveness
- Open Questions & Pending Legislation
- Resources



Overview/Recap:

PPP Legislation Background

- CARES Act (3/27/20)
 - Created Paycheck Protection Program (PPP) in sections 1102 & 1106
 - Appropriated \$349B of funding which lasted until ~4/16/20
- PPP & Health Care Enhancement Act (4/24/20)
 - Provided \$310B of additional PPP funding
- PPP Flexibility Act of 2020 (6/5/20)
 - Provided borrower-friendly changes to PPP program (i.e. 24-week covered period)
- Public Law 116-147 (7/4/20)
 - Extended loan application deadline from 6/30/20 to 8/8/20



Overview/Recap:

Paycheck Protection Program

- Receive loan equal to 2.5 months worth of 2019 payroll
- Spend loan proceeds over the next 8-week or 24-week covered period
 - Must be spent on payroll costs, mortgage interest, rent, and utilities
- Amounts spent during covered period are forgiven and do not have to be repaid to lender (loan forgiveness amount)
- Loan forgiveness is reduced if borrower:
 1. Cuts the salary rate or hourly pay rate of any single EE by more than 25% during covered period versus Q1 2020
 2. Average full-time equivalency (FTE) count during covered period is less than the average FTE for specified pre-COVID reference periods



Key Item:

Nondeductible PPP Expenses

- Forgiven PPP loan is non-taxable income
- Notice 2020-32 by IRS made expenses paid with forgiven PPP funds nondeductible
- Efforts in Congress to restore deductibility of expenses
 - Bipartisan support (but not everyone) that nondeductible expenses was not Congress' intent
 - Bill S.3612 continues to collect cosponsors
- For calendar year taxpayers, if PPP expenses incurred in 2020, but loan forgiveness not completed until 2021 how are expenses handled?
 - Nondeductible in 2020?
 - “Addback” expenses into income in 2021?
 - Similar issues for fiscal year filers
 - Consider extending returns



Key Item:

Related Party Rents

- Rent paid to related parties is only forgivable to the extent of mortgage interest owed on the rented property during the covered period
 - **Any** ownership in common between the business and the property owner is a related party for these purposes.
- Mortgage interest paid to related party is not forgivable

Example

Borrower Co., a PPP borrower, operates out of a facility owned by Real Estate LLC. Borrower Co. and Real Estate LLC share common ownership and are therefore related parties.

During the covered period, Borrower Co. makes two months' worth of \$50,000 rent payments to Real Estate LLC totaling \$100,000 in rent expense. During this same period, Real Estate LLC incurs \$20,000 of mortgage interest expense for each of the two months totaling \$40,000 of mortgage interest.

Borrower Co. may only request loan forgiveness for \$40,000, the lesser of the amount of rent paid (\$100,000) and mortgage interest owed (\$40,000) during the covered period.

If instead the facility owned by Real Estate LLC was not subject to debt and owed no mortgage interest during the covered period, Borrower Co. would be unable to request loan forgiveness for any of the rent payments made.



Key Item:

Loans >\$2M Subject to Audit

- Treasury Secretary Mnuchin has signaled that all PPP loans greater than \$2 million will go through an individual “audit”
 - Specifics of “audits” are still not definitive, may be influenced by public perception, high profile fraud cases, etc.
- +\$2M checkbox on PPP forgiveness application
 - Don’t combine loans of multiple locations if your business is not subject to the affiliation rules
 - Franchised dealerships whose franchisors have been assigned franchise identifier codes are waived from applying the affiliation rules
 - For example:
Two franchised dealerships with FIC codes each with PPP loans of \$1.5M. Neither dealership forgiveness application should check the \$2M+ checkbox



Key Item:

Salary/Wage Reduction Safe Harbor

- The salary/wage forgiveness reduction does **not** apply for any single employee if the safe harbor is satisfied
- Safe harbor requires:
 - Average annual salary or hourly wage for EE decreases between dates of 2/15/20 – 4/26/20, and
 - Average annual salary or hourly wage of EE restored to 2/15/20 levels by earlier of 12/31/20 or date of loan forgiveness application



Key Item: *FTE Reduction Exceptions*

- Borrower's FTE count is not reduced for any of the following exceptions:
 - Any positions for which the Borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee
 - Borrower inform state unemployment offices
 - Any employees who during the Covered Period or the Alternative Payroll Covered Period:
 - Were fired for cause, or
 - Voluntarily resigned, or
 - Voluntarily requested and received a reduction of their hours.
 - In each of these cases, the exception only applies if the position was not filled by a new employee



Key Item:

FTE Reduction Safe Harbor

- The FTE reduction does **not** apply for any borrower if the safe harbor is satisfied
- Safe harbor requires:
 - Average FTE decreases between dates of 2/15/20 – 4/26/20, and
 - Average FTE restored to 2/15/20 levels by earlier of 12/31/20 or date of loan forgiveness application
- Additionally, any borrower that has not reduced the number of employees or the average paid hours of their employees between 1/1/20 and the end of the covered period is considered to meet the safe harbor



Key Item:

FTE Safe Harbor; COVID Safety Guidelines

- The Borrower was unable to operate between February 15, 2020 and the end of the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020, by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.
- Borrowers that can certify that they have documented in good faith that their reduction in business activity during the covered period stems directly or indirectly from compliance with such COVID Requirements or Guidance are exempt from any reduction in their forgiveness amount stemming from a reduction in FTE employees during the covered period.
 - Such documentation must include copies of applicable COVID Requirements or Guidance for each business location and relevant borrower financial records.



Key Item:

FTE Safe Harbor; COVID Safety Guidelines

Example from Regulations:

- A PPP borrower is in the business of selling beauty products both online and at its physical store. During the covered period, the local government where the borrower's store is located orders all nonessential businesses, including the borrower's business, to shut down their stores, based in part on COVID-19 guidance issued by the CDC in March 2020.
- Because the borrower's business activity during the covered period was reduced compared to its activity before February 15, 2020 due to compliance with COVID Requirements or Guidance, the borrower satisfies the Flexibility Act's exemption and will not have its forgiveness amount reduced because of a reduction in FTEs during the covered period, if the borrower in good faith maintains records regarding the reduction in business activity and the local government's shutdown orders that reference a COVID Requirement or Guidance as described above.



Applying For Forgiveness

- SBA platform opened for lender submission August 10th
- Lenders are now starting to roll out portals, checklists, etc. for borrowers to apply for forgiveness
 - Check with your PPP lender for specifics
- Lender has 60 days to review forgiveness application, SBA has 90 days from lender submission to make determination
 - Will lenders/SBA be able to meet these timeframes?



Applying For Forgiveness:

Loan Repayment Deferral

- Original terms:
 - 6-month deferral
- PPP Flexibility Act:
 - Deferral until earlier of:
 - The date on which loan forgiveness is remitted to the lender by the SBA, or
 - 10 months from end of the covered period, if borrower has not applied for forgiveness by this time
 - Retroactively effective as if included in CARES Act, applies to all loans



Applying For Forgiveness:

Forgiveness Form Options

- Form 3508
 - Default loan forgiveness calculation form
 - Borrowers with forgiveness reductions associated with a reduction in pay rate for employees or a decrease in FTE
- Form 3508EZ
 - Simplified “E Z” loan forgiveness calculation form
 - Borrowers without forgiveness reductions



Applying For Forgiveness: *Form 3508EZ Eligibility*

1. Option 1:

- Self-employed borrowers with no employees

2. Option 2:

- Borrower did not reduce annual salary or hourly wages of any employee by more than 25% during the covered period, as compared to Q1 2020 (*only applies to employees that earned less than \$100k annualized for all pay periods in 2019*), **AND**
 - Borrower did not reduce number of employees or average paid hours of employees between January 1, 2020 and end of the Covered Period (after adjusting for FTE exceptions), **OR**
 - Borrower unable to operate during Covered Period at pre-COVID level of business activity directly or indirectly due to compliance with safety/social distancing requirements from HHS, CDC, OSHA



Applying For Forgiveness:

Information Gathering for Forgiveness

- Payroll costs
 - Payroll provider reports, payroll registers, bank statements, or other documentation verifying payroll costs
 - Payroll tax filings, typically Form 941
 - State payroll filings
 - State unemployment insurance filings
 - Cancelled checks, receipts, or other account statements documenting employer health insurance and retirement plan contributions
- Full time equivalents
 - Documentation showing calculation of average number of FTE for:
 - Covered period (or alternative covered period, if used)
 - Pre-COVID reference period (i.e. 2/15/19 – 6/30/19, or 1/1/20 – 2/29/20)
 - Any other periods referenced for safe harbors (i.e. 2/15/20, date of application)



Applying For Forgiveness:

Information Gathering for Forgiveness

- Nonpayroll costs
 - Mortgage interest expense
 - Lender amortization schedule and cancelled checks verifying payments
 - Lender account statements from February 2020, covered period, and one month after the covered period
 - Rent expense
 - Current lease agreement and cancelled checks verifying payments
 - Lessor account statements from February 2020, covered period, and one month after the covered period
 - Utilities expense
 - Cancelled checks or account statements verifying payments
 - Invoices from February 2020 and those paid during the covered period



Loan Forgiveness:

Documentation Retention

- All records relating to the Borrower's PPP loan should be retained for at least **six** years after the loan is forgiven or repaid including:
 - Documentation submitted with its PPP loan application
 - Documentation supporting the Borrower's certifications as to the necessity of the loan request and its eligibility for a PPP loan
 - Documentation necessary to support the Borrower's loan forgiveness application
 - Documentation demonstrating the Borrower's material compliance with PPP requirements.



Open Questions & Pending Legislation

- If apply before end of a 24-week covered period (i.e. week 14), SBA has yet to provide guidance on how FTE reduction is calculated
- Uncertain about how liberally to apply the exemption from FTE reduction related to COVID-compliance guidelines impacting operations
- Handling nondeductible PPP expenses (discussed previously)
- Does floorplan interest expense qualify as “mortgage interest”?



Open Questions & Pending Legislation

- Stimulus Legislation Possible Changes:
 - Deductible PPP expenses
 - Simplified application procedures
 - “Automatic” forgiveness for loans <\$150K
 - Reduced documentation for loans <\$2M
 - Covered period flexibility
 - Expanded use of PPP proceeds (i.e. PPE, operations expenses, property damage)
 - 2nd round of PPP loans for borrowers with 300 or less employees that can show a 35%+ decline in quarterly revenues
 - Allow PPP borrowers to retroactively claim the Employee Retention Credit



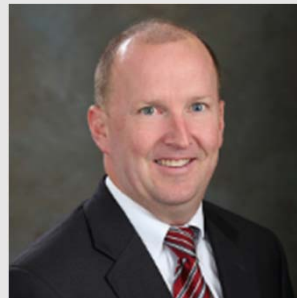
Resources

- [Form 3508 & Instructions](#) / [Form 3508EZ & Instructions](#)
- [Treasury PPP Guidance Page](#)
- [SBA Franchise Directory](#)
- www.oed.com/covid-19 (recorded presentation, slide deck, forgiveness worksheet)

Contact Us With Your Questions



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