

COVID-19

LIGHTNING ROUND

PPP – Forgive But Never Forget

9.21.20



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Overview & History



PPP – Current Status

Per US Treasury's website – August 8, 2020

- Summary of Lending
 - \$659 billion authorized by Congress
 - As of **8.8.20** - 5.21 million loans totaling \$525 billion (\$101k avg)
 - As of **5.16.20** - 4.34 million loans totaling \$513 billion (\$118k avg)
 - 5,500 lenders
 - 34 lenders initiated 36% of the loans
 - Approximately 29,000 loans > \$2 million
 - \$134 billion in funding remaining
 - Select State information
 - FL 433k loans \$32.2 billion
 - CA 623k loans \$68.6 billion
 - NY 349k loans \$38.7 billion

PPP – Legislative Timeline

- CARES Act signed March 27, 2020, which created the Paycheck Protection Program.
- First round of funding: April 3 – April 16.
- Additional funding added April 24.
- PPP Flexibility Act signed into law June 5.
 - Expanded term from 8 weeks to 24 weeks.
- On July 3, deadline for application extended from June 30 to August 8.

PPP – Regulatory Timeline

- 24 total interim/final rules issued
- Interim/final rule 1 issued April 2, 2020.
- Most recent issued interim/final rule August 24.
- Two FAQ documents updated as of August 11.
- Borrower Application released April 2.
- Loan Forgiveness Application released May 15.

WHEN PPP LOANS ARE YOUR LIFE



Key Provisions



PPP - Eligibility

- Any small business with less than 500 employees (including sole proprietorships, independent contractors and self-employed persons), private non-profit organization or 501(c)(19) veterans organizations affected by coronavirus/COVID-19.
- Businesses in certain industries may have more than 500 employees if they meet the SBA's size standards for those industries.
- Small businesses in the hospitality and food industry with more than one location could also be eligible at the store and location level if the store employs less than 500 workers. This means each store location could be eligible.
- *Non-profit organizations are defined as 501(c)(3) organizations*

PPP – Loan Application

- Issued 4/2/20, last revision 6/24/20
- Very Simple Application
- Information required:
 - Average monthly payroll
 - Number of employees/jobs
 - Information of owners greater than 20%
 - Other various questions
 - Certifications
 - Sign as “Authorized Representative of Applicant”

PPP – Permissible Costs

- Payroll costs
 - Gross salaries with a cap of \$100k, annualized
 - Hourly wages and cash tips
 - Employer retirement contributions
 - Group health insurance premiums
 - State and local payroll taxes
- Interest payments on mortgages
- Rent and lease payments
- Utility services

PPP Flexibility Act

- Issued June 5, 2020
- Extended the covered period from eight weeks after the date of loan disbursement to 24 weeks
- Borrowers who received funds before June 5 can elect to use an eight-week covered period
- Lowered the requirements that 75 percent of a borrower's forgiveness amount must be spent for payroll costs to 60 percent
- Provided a new safe harbor from reduction related to FTE as a result of government requirements or guidance
- Provided a new safe harbor from reduction related to FTE if unable to rehire employees and unable to hire similarly qualified employees by December 31, 2020

PPP Flexibility Act

- Increased the maturity of PPP loans to five years for loans June 5, 2020 or after
- The borrower and lender can mutually extend the maturity of existing loans made prior to June 5
- Extended the deferral period for payments of principal and interest to the date the SBA remits loan forgiveness amounts to the lender (or 10 months after the forgiveness covered period if the borrower does not apply for forgiveness)

PPP – Loan Application



Forgiveness



Forgiveness Application

- Issued 5/15/20, last revision 6/16/20
- Five page application including supplemental schedules
- Application Sections include:
 - Business, Loan and Employee Information
 - Payroll frequency and covered period
 - Totals of Forgivable Costs: payroll costs, mortgage interest, rent/lease payments, and business utility payments
 - FTE and Wage Reductions
 - Three Potential Forgiveness Amounts and choose the smallest of the three
 - Certifications and Signature

Forgiveness Application

- Schedule A and related Worksheet are where details for totals on application are calculated
- Schedule A sections include:
 - Table 1 – employees < \$100k or not employed during 2019
 - Table 2 – employees > \$100k
 - Non-cash compensation (i.e. health, retirement and certain taxes)
 - Owner compensation
 - FTE Reduction Calculations/Safe Harbors
- Optional demographic information

Forgiveness EZ Application

- Three page application
- For self-employed with no employees, and businesses who did not reduce pay and are subject to FTE reduction safe harbor
- No calculation of FTE reductions only a certification
- Additional certification that pay not reduced during period and that:
 - Number of employees or average paid hours not reduced or
 - Unable to operate as normal because of government requirements or guidance

Top Ten List (apologies to Mr. Letterman)

Ten Items of Note related to PPP Forgiveness

1. Permissible non-payroll costs cannot exceed 40% of the total **Forgiveness** amount.
2. Forgiveness is not “all or nothing.” Amounts can be forgiven even if < 60% of total loan is spent on payroll.
3. Covered period can be shifted to coincide with the first day of the first pay period starting after loan funds have been received.
4. Cash compensation is capped at \$46,154 per non-owner employee.
5. Lease/rent includes valid leases at 2/15/20 for real or personal property.



Top Ten List

Ten Items of Note related to PPP Forgiveness

6. Interest costs includes valid loans at 2/15/20 with mortgages on real or personal property.
7. FTE calculations should be based on a 40-hour week with two alternative methods for calculation.
8. Documentation must be retained for 6 years after end of loan.
9. The SBA may direct a lender to disapprove forgiveness if it determined that the Borrower was ineligible for the PPP loan.
10. Owner-related compensation and other payments are a tricky subject, and forgiveness is allowed in certain situations but not allowed in other situations.

Items of Note and Random Thoughts

1. The borrower will not be able to reduce pay rates over 25% until late 2020 depending on when they received funding.
2. The non-owner cash compensation for 24 weeks is capped at \$46,154, whereas Owner compensation is capped at 2.5 months of 2019 pay limited to \$100k. (\$20,833 if pay exceeded \$100,000.)
3. The application is multiplying the FTE reduction ratio to the total payroll for 24 weeks, so in many cases the reduced amount will still exceed the total loan.
4. The loan forgiveness application can be filed at any time during the 24 week covered period or within 10 months after the covered period ends.
5. It may be beneficial for a borrower to choose an 8-week period if a large pay cut or staff reduction is anticipated in weeks 9-24. Otherwise, the longer, 24-week period is likely to be more beneficial.

Potential Future Items

1. PPP 2 – For a second round of more targeted financial relief?
2. Change in IRS ruling regarding deduction of expenses paid for with PPP funds? (as of right now the PPP funds are essentially taxable income)
3. Legislation to automatically forgive PPP loans under a certain amount (~\$150k)?

Stories of Fraud and Abuse

1. NFL player in St. Petersburg charged as part of a scheme to file at least 90 fraudulent applications for more than \$24 million.
2. NYT article on Aug 28 – Justice Department made at least 41 criminal complaints against 60 people who fraudulently took \$62 million
3. Inspector general of the SBA says “the smallest, tiniest piece of the tip of the iceberg”
4. Sept 1 NBC report – Over 10,000 loans and over \$1 billion went to companies that “double-dipped” according to a preliminary analysis by a House committee
5. Roofing contractor in Ft. Myers. Received more than \$2 million. Within days purchased a 40-ft catamaran for \$689k

TBD

Questions?



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Thank You!



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