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COVID-19: SBA PPP Loans *Forgiveness Updates, Myths and Additional Scrutiny*

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Presenters



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Paycheck Protection Program Loan

FAQ Updates

- US Treasury FAQ <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>
- Question 29 and 30 – Lender related questions
- Question 31 and 37 - Necessity of a PPP loan
- Question 32 – Housing stipend and allowance
- Question 33 – Principal place of residence
- Question 34 – Eligibility of ranchers, farmers, agricultural producers
- Question 35 – Eligibility of agricultural and other forms of cooperatives
- Question 36 – Clarification of employee count for SBA loan application
- Question 38 – Whether acquired businesses after 2/15/20 are eligible
- Question 39 – SBA review of PPP loan files
- Question 40 – Impact on forgiveness when laid off employee declines offer
- Question 41 – Season employer certifications (Interim Final Rule on the same 4/27/2020)
- Question 42 – Nonprofit hospital qualifications

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Forgiveness Updates

Question 31 and 37 – Increased PPP Loan Scrutiny

- Good faith certification
 - *“Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”*
- Credit elsewhere waived
- Current business activity, ability to access other sources of liquidity
- Not significantly detrimental to the business
- Loans over \$2 million would be “audited” by SBA

Reassess Your Situation

- Develop financial projections of having not received the PPP loan
 - Inability to retain employees
 - Inability to pay operating expenses
 - Loss of revenues (e.g., project delays)
 - Dipping into other funds that would be detrimental to ongoing operations
 - Uncertainty of AR collections
 - Supply chain disruption impact
- Determine whether to pay back
 - Ability to pay back without penalty by **May 14, 2020**
 - False Claims Act

If You Determine You Continue to Qualify for the PPP Loan

- Documentation re basis for good faith certification
 - Assess economic need at the time of the loan application and through May 7, 2020
 - Why PPP loan request is necessary
 - Current and projected business activity
 - Use of the PPP loan to retain employees
 - Ability to access other sources of liquidity
 - Cash flow considerations
 - Financial projections

Question 38 – Acquired Businesses post 2/15/20

- In operation on 2/15/20
- Change in ownership is not relevant
- Asset purchase exemption
- Pre-sale business operations in place
 - Historic payroll costs
 - Headcount

Question 39 – SBA Review of PPPL Files

- All loans in excess of \$2 million
- In addition to other loans as appropriate
- Follows submission for forgiveness
- Additional guidance forthcoming
- Outcome does not affect SBA guarantee

Question 40 – Rehiring Employees

- Laid off, offer to rehire, employee declined?
- Does not affect the forgiveness amount
- Assumes same salary wages and hours were offered
- Employee decline must be documented by borrower
- Employee may forfeit eligibility for unemployment

A grayscale photograph of the United States flag waving in the foreground on the left, with the dome of the United States Capitol building visible in the background on the right. The image is partially obscured by a solid green horizontal bar at the bottom.

PPP Loan for Self-Employees,
Partners and Independent
Contractors

PPP Loan for Self-Employed, Partners and Independent Contractors

- Individuals with self-employment income who file a Form 1040, Schedule C are eligible for a PPP loan if:
 - You were in operation on February 15, 2020
 - You are an individual with self-employment income (independent contractor or sole proprietor)
 - Your principal place of residence is in the United States
 - You filed or will file a Form 1040 Schedule C for 2019

How do I calculate the maximum amount I can borrow?

If you have no employees:

- **Step 1:** Use your 2019 IRS Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value). If this amount is over \$100,000, reduce it to \$100,000. If this amount is zero or less, you are not eligible for a PPP loan.
- **Step 2:** Calculate the average monthly net profit amount (divide by 12) (from step 1)
- **Step 3:** Multiply the average monthly net profit amount by 2.5 (from step 2)
- **Step 4:** Add any outstanding amount from an Economic Injury Disaster Loan (EIDL) received between January 31, 2020 and April 3, 2020, that you seek to refinance, less the amount of any advance.

How do I calculate the maximum amount I can borrow?

If you have employees:

- **Step 1:** Compute 2019 payroll by adding the following:
 - Use your 2019 IRS Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value). If this amount is over \$100,000, reduce it to \$100,000. If this amount is less than zero, use zero.
 - 2019 gross wages and tips paid to your employees. Subtract any amounts paid to any individual employee in excess of \$100,000 annualized and any amounts paid to any employee whose principal place of residence is outside the United States.
 - 2019 employer health insurance contributions (health insurance component of Form 1040 Schedule C line 14), retirement contributions (Form 1040 Schedule C line 19) and state and local taxes assessed on employee compensation.
- **Step 2:** Calculate the average monthly net profit amount (divide by 12) (from step 1)
- **Step 3:** Multiply the average monthly net profit amount by 2.5 (from step 2)
- **Step 4:** Add any outstanding amount from an Economic Injury Disaster Loan (EIDL) received between January 31, 2020 and April 3, 2020, that you seek to refinance, less the amount of any advance.

How can PPP loans be used by self-employed and independent contractors?



- Owner compensation replacement, calculated based on 2019 net profits above (8 weeks / 52 weeks)
- Employee payroll costs as described in the CARES Act, if you have employees
- Mortgage interest payments on debt incurred prior to February 15, 2020
- Rent for leases that were in place before February 15, 2020
- Utilities for services that were in place before February 15, 2020

Recent IRS Guidance on Forgiveness

- Expenses forgiven are not deductible
- Potentially subject to change. Lobbying efforts underway.
- Forgiveness remains not taxable
- Results in a tax neutral position
- Decision making going forward

Expectations for Final Guidance

- Initial guidance was expected by Monday, April 27th (30 days after CARES Act became law)
 - Estimated timeline is now May 15th (unofficial)
- Unanswered questions:
 - Flexibility of 8 week covered period
 - Define “costs incurred and payments made”
 - Define “full time equivalent employee” calculation
 - Measurement of FTEEs on June 30th
 - Measurement of wages for hourly employees with reduced hours only (no decrease in hourly wage)
 - Definition of utilities
 - Whether rent includes property tax or CAM
 - Whether interest of other debt can be forgiven
 - Measurement of wage reduction over 8 weeks vs. prior quarter
 - Flexibility of penalty “cure date” of June 30th
 - Guidance around question 31 and 37

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Busting the Myths

Myth #1

Myth:

- I can use 25% of my loan on non-payroll and have it forgiven (irrespective of how much payroll I spend).

Fact:

- The 25% / 75% rule is a ratio. No more than 25% of what is being requested for forgiveness can be non-payroll dollars. The non-payroll dollars are determined based on the payroll dollars.



Myth #2

Myth:

- If I don't use 75% of my loan on payroll then none of my loan is forgiven.

Fact:

- There is no indication that this is true. However, at least 75% of the forgivable portion has to be spent on payroll.



Myth #3

Myth:

- If I have a better 2020 than 2019 then I will not get debt forgiveness.

Fact:

- Current guidance does not provide for a comparison of 2020 vs 2019 as a basis for forgiveness. If you are expecting a better 2020 than 2019, however, the documentation for FAQ 31/37 may be important to set forth your reasons for the good faith certification.



Myth #4

Myth:

- I can hire everyone back on June 30th for one day to eliminate the FTEE penalty.

Fact:

- As of current guidance there is no indication as to the amount of time you have to retain employees after June 30th. We anticipate there will be additional conditions, but currently, there do not appear to be any. We also do not know how FTEEs will be measured based on one day.



Myth #5

Myth:

- I can prepay expenses.

Fact:

- The CARES Act specifically prohibits the prepayment of interest expense and we expect the same guidance for other expenses. Also, the “incurred and paid” would suggest that prepayment is not appropriate.



Myth #6

Myth:

- Payroll and non-payroll costs are based on the accrual basis.

Fact:

- We believe the language “incurred and paid” indicates a cash basis measurement for forgiveness during the 8-week time period.



Myth #7

Myth:

- I count the FTEEs on the last day of my 8 weeks.

Fact:

- The FTEEs are an average during the 8 weeks worked, not the last day of the 8 weeks
 - Weeks 1 to 4 = 10
 - Weeks 5 to 8 = 12
 - Average FTEES = 11



Myth #8

Myth:

- My employees have to be doing actual work to count as an FTEE.

Fact:

- You can pay employees in accordance with how they previously worked and have them not work. Consult with legal counsel on applicable employment laws.



Myth #9

Myth:

- 25% reduction is based on total wages for hourly employees.

Fact:

- The CARES Act indicates that the measurement is for an individual employee; therefore, we believe this is an individual by individual measurement not in aggregate. We also believe that if you simply reduced hours and not the wage, then the 25% would not be “triggered”.



Myth #10

Myth:

- I can use PPP loan proceeds for other 7(a) allowable purposes.

Fact:

- There is some disagreement about this. The PPP loans are under the SBA 7(a) program and the CARES Act indicates that in addition to the 7(a) uses, the funds can be used for payroll, rent, mortgage interest, etc. However, other guidance does not indicate the other 7(a) uses and there was certification in the application that the funds would be spent on payroll and retaining employees.





Main Street Lending Program

Overview

| | New Loans | Priority Loans | Expanded Loans |
|---|--|--|--|
| Origination Date | After April 24, 2020 | After April 24, 2020 | On or before April 24, 2020 (added to existing loan already with lender) |
| Term | 4 Years | 4 Years | 4 Years |
| Rate | LIBOR +3% | LIBOR +3% | LIBOR +3% |
| Minimum Loan Size | \$500K | \$500K | \$10MM |
| Maximum Loan Size | Lesser of (a) \$25MM or (b) an amount that doesn't exceed 4x the borrower's 2019 EBITDA (including undrawn committed debt) | Lesser of (a) \$25MM or (b) an amount that doesn't exceed 6x the borrower's 2019 EBITDA (including undrawn committed debt) | Lesser of (a) \$200MM, (b) 35% of undrawn committed bank debt, or (c) an amount that doesn't exceed 6x the borrower's 2019 EBITDA (including undrawn committed debt) |
| Payments (year one deferred for all with unpaid interest capitalized) | Year 2-4: 33.33% each year | Year 2: 15% Year 3: 15% Year 4: 70% | Year 2: 15% Year 3: 15% Year 4: 70% |
| Risk Retention by Lender | 5% | 15% | 5% |

Eligibility

- Business created or organized in USA prior to March 13, 2020
- Fewer than 15,000 employees OR revenues of less than \$5 billion (affiliation applies)
- Cannot be an “Ineligible Business”
- Refrain from repaying other loan balances
- Commit to maintain payroll and retain employees
- Ability to meet its financial obligation
- Abide by compensation, stock repurchase and capital distribution restrictions
 - Tax distributions allowed for pass-through entities
- Certify eligibility to participate

Comparison to PPP Loans

- No forgiveness factor
- Administered by banks and authorized lenders
- Recipients of PPP funds may apply



Need to Prove Losses/Damages

- Resulting from COVID-19 disruption
- Continuing operations at risk
- Good faith effort to maintain payroll/retain employees
- Anticipated use of proceeds

Next Steps



- Consult with your bank
- Application process not open yet
- Create your business case
- Available through September 30, 2020, unless extended

Questions



Additional Resources

- [COVID-19: Bankruptcy or Out of Court Restructuring...](#) (April 20, 2020)
- [FAQs – COVID 19: Maximizing Debt Forgiveness PPP Loan](#)
- [SBA PPP Loans: IRS Guidance on Forgiven Expenses](#) (NEW – May 1, 2020)
- [Do You Need To Give Your PPP Loan Proceeds Back?](#) (NEW – April 28, 2020)
- [Round 2 Of The Paycheck Protection Program](#) (NEW – April 22, 2020)
- [PPP Loan for Self-Employed, Partners & Contractors](#) (April 20, 2020)
- [Accounting For PPP Loans And Forgiveness](#) (April 17, 2020)



Upcoming COVID-19 Webinars

- [COVID-19: Maximizing Relief for the Restaurant Industry](#)
 - May 7, 2020 from 12:00 – 1:00 PM
 - Join GBQ and the Ohio Restaurant Association experts as we focus on some of the critical challenges restaurant owners are facing due to COVID-19 and what you can do to weather the storm.
- **“Save The Date”** Accounting for PPP Loans and Forgiveness
 - May 13, 2020 from 12:00 – 1:00 PM
 - Information coming soon

What to Expect from GBQ

- **Knowledge.** We're reading and reacting all day every day so that we can share important information with you quickly.
- **Accessibility.** We're not in the office, but we're on high alert to help with whatever you need.
- **Reliability.** One of us may not know the answer, but our team will find it, whether inside or outside of GBQ. We will help you solve your problems.
- **Empathy.** We are learning every day, just like you. We are worried about our employees, our customers and our families, just like you.

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