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COVID-19: SBA PPP Loans – Paycheck Protection Program Loan Necessity Questionnaire

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Presenters



Darci Congrove
Managing Director
(614) 947-5224
dcongrove@gbq.com



Rebekah Smith
*Director of Forensic and
Dispute Advisory Services*
(614) 947-5300
rsmith@gbq.com



Dustin Minton
*Director, Assurance &
Business Advisory Services*
(513) 744-5073
dminton@gbq.com

What Are The Forms?

- Form 3509 – For-profit
- Form 3510 – Non-profit
- The SBA has indicated the forms will not be posted on the SBA website; rather, come directly from lenders.
- More guidance is expected from SBA



What Does Form 3509/3510 Mean?

- Used to inform the SBA's review of your good faith certification that economic uncertainty made your loan request necessary to support your ongoing operations.
- Receipt of this form does not mean that the SBA is challenging that certification.
- SBA may request additional information to complete review.
- SBA's determination will be based on the totality of your circumstances.

What Does Form 3509/3510 Mean?

- May be used as a “roadmap” to prioritize SBA audits
 - More than 30,000 loans >\$2M
- Certain answers may give rise to higher scrutiny
 - Large cash balances
 - Distributions to owners
 - Paying down debt
 - Highly compensated employees
 - Public company, foreign ownership or PE owned

Who Should Expect to Receive One?

- Unclear at this point if it is all borrowers with PPP loans of more than \$2 million or just select borrowers
 - Including as aggregated by affiliated borrowers
- Form is completed by each borrower



When Will You Receive the Form (If You Are Receiving It)?



- Lender will provide form to you based on SBA's request
- Form is due to lender within 10 business days of receipt from your lender

What Happens Once I Fill It Out?

- Within 5 business days, lender will upload completed form and supporting documentation to SBA Paycheck Protection Forgiveness platform
- Lender will separately input your responses to each question into web form



What Happens If I Do Not Fill It Out If Requested?

- Failure to complete may result in determination that you were ineligible for:
 - PPP loan
 - PPP loan amount
 - Forgiveness amount claimed
- SBA may seek repayment of loan or pursue other remedies

Information Being Requested

- Demographic information (standard info request)
- Business activity assessment (7 questions)
- Liquidity assessment (12 questions)
- Supporting documentation for certain questions



Our Initial Thoughts

- Question as to the intended use of the form
- Intent of PPP loan
- Backward approach
 - Now versus loan application date
- Limited space to provide context
- Missing relevant questions
- Ignores the economic reality of trillions put into the economy

Business Activity Assessment

- Comparison of gross revenue from Q2 2020 to Q2 2019
 - Seasonal borrowers may provide Q3 2020/2019
 - If borrower did not exist in Q2 2019, Q1 2020 must be used
- Governmental orders shutting down or altering the operations
 - Capacity constraints
 - Service restrictions to outdoors
 - Employee workspaces were reconfigured
 - Cash outlays
- Voluntary closures or operational changes made
 - Employee contracted COVID-19
 - Supply chain disruption
 - Dates of such closures/changes
- Capital projects after March 13, 2020 through end of Covered Period not related to COVID-19
 - Cash outlays for such projects
- 1,000 character comment section

Liquidity Assessment

- Addressing access to capital
- Cash balance at March 31, 2020
- Dividends or capital distributions paid between March 13, 2020 and end of Covered Period
 - Excludes pass through estimated tax payments, as defined
- Prepayment of outstanding debt between March 13, 2020 and end of Covered Period
- **Employees** paid \$250,000 or more on an annualized basis during the Covered Period
 - Number of employees
 - Total amount paid
- **Owners** paid \$250,000 or more on an annualized basis during the Covered Period
 - Number of employees
 - Total amount paid

Liquidity Assessment (cont.)

- Whether public company or not
 - Ownership of 20% or more by a public company
- Book value of Borrower as of the last day of calendar quarter immediately before date of PPP loan application
- Affiliation questions regarding:
 - At least 50% ownership by a parent company
 - Foreign ownership of parent company
 - Publicly traded in another country
- Whether 20% or more of any class of equity owned by a private equity, venture capital firm, or hedge fund
- Whether borrower received any funds from any CARES Act program other than PPP
- 1,000 character comment section

Certifications

- Authority to sign and submit on behalf of Borrower
- Information is true and correct
- Acknowledging penalties associated with making a false statement



Form 3510 Differences (Non-profit)

- Non-Profit Activity Assessment (10 questions)
 - Total gross receipts
 - Gross receipts from gifts, grants, contributions
 - Expenses
 - Q2 '20 vs. Q2 '19
- Liquidity Assessment (12 questions)
 - Restrictions on use of cash related to payroll, rent, utilities, and mortgage interest
 - Assets held in endowment funds
 - Non-cash investment value
 - School, college or university
 - Provider of health care services

Actions To Take Now

- Review the questionnaire to be prepared to complete within 10 business days if requested
- Consider pausing on applying for forgiveness
 - Must apply for forgiveness within 10 months of end of covered period
- Good faith certification documentation in place, including memo, projections, emails, etc.

Actions To Take Now (cont.)

- Provide feedback on the form via mail
 - Comment period open until November 25, 2020
- Write your Congressional representative
 - Potential problems with the forms
 - Template letter provided [here](#)

Questions



Additional Resources

- [PPP Loans Over \\$2 Million Face Additional Information Requests](#) (**NEW** - 11/2/20)
- [SBA Releases New PPP Forgiveness Form 3508S for Loans \\$50,000 or Less](#) (10/12/20)
- [SBA Announces Guidance for PPP Borrowers and M&A Transactions](#) (10/8/20)
- [Latest PPP Updates: Owner Compensation, Tenant Costs and Related Party Rents](#) (9/2/20)
- [The Possible Tax Consequences Of PPP Loans](#) (8/11/20)



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.

Contact Information



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