PPP Loan Forgiveness

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JULY 1, 2020
Disclaimer

• This presentation is for educational purposes only. It should not be construed or relied on as legal advice or to create any client, advisory, fiduciary, or professional relationship between you and CLA. You should consult with your legal counsel if you have questions or concerns regarding your eligibility to participate in the Paycheck Protection Program (PPP) or other PPP-related issues.

• This presentation considers guidance provided by the SBA and US Department of the Treasury through [JUNE 29, 2020]. Additional guidance is being provided on a regular basis, please refer to the US Department of the Treasury website (https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses) for recent updates.
Recent Developments
PPP Flexibility Act – June 5, 2020

• Extends Covered Period to 24 weeks
  – Existing borrowers can retain 8 week period
  – IFR issued 6/22 clarified that borrower can request forgiveness before the end of extended 24 week period

• Set minimum term for new loans at 5 years

• Forgiveness requested within 10 months of CP end
  – Yes - Extends deferral period until forgiveness is remitted to the lender
  – No - Start servicing loan
PPP Flexibility Act

• At least 60% payroll test/no more than 40% nonpayroll
  – Originally interpreted as a minimum threshold for eligibility
  – Interim Final Rule on 6/10/2020 clarified that this will be applied as a proportional forgiveness test
    ◊ treat the same as the previous 75/25 test for forgiveness limitations, just with 60/40 ratios
PPP Flexibility Act

- Safe harbors for FTE reduction test
  - Not able to rehire previous employees AND are unable to hire similarly qualified employees for unfilled positions
  - Unable to return to same level of business activity due to compliance with OSHA, CDC or other requirements
    ◊ IFR from 6/22 provides implementation guidance
- Allows Employer FICA deferral
- DID NOT address deductibility of expenses
Loan Forgiveness Application(s)

• Loan Forgiveness Application (and Instructions) updated 6/16
• New EZ Form and Instructions issued 6/16
  – Self-employed with no employees
  – Meet safe harbors for no wage or headcount reductions
  – Meet safe harbors for no wage reduction and new “unable to operate at prior level of business activity”
Loan Application Insights

• Caps on wages for employees and owners (see below – based on IFR)

• Clarifications on health insurance and retirement plan costs includable for owners

• Safe harbor application
  – Wage and FTE elimination measured at earlier of 12/31 or forgiveness application date
  – “Unable to Operate” measured through end of CP
IFR issued June 22nd

• Forgiveness timing
  – Can apply before the end of CP once all loan proceeds used for which forgiveness is requested
  – If wage reduction applicable, apply for full 24 weeks
  – No guidance on implementation beyond wage reduction
  – No guidance on how to reflect on applications
IFR issued June 22nd (Continued)

- Owner-Employee matters
  - Includes owner-employees of C-corps
    ◊ Cash comp limited to 8 weeks or 2.5 months of 2019 comp
    ◊ Can include ER paid healthcare and retirement
  - S-Corp owner-employees
    ◊ Cash comp limited to 8 weeks or 2.5 months of 2019 comp
    ◊ Can include ER paid retirement, but NOT ER paid healthcare
  - Schedule C/F and General Partners
    ◊ Limited to 2019 Schedule C/F or K-1, 8 weeks or 2.5 months
    ◊ Can not include ER paid healthcare or retirement
“Business Activity” Safe Harbor

- Exempts from FTE Reduction test
- Document reduction in business activity during CP stems directly or indirectly from COVID requirements or guidelines set by HHS, CDC or OSHA
  ◊ State and local government shutdown orders based on federal agency guidelines
  ◊ Relevant Borrower Financial Records
IFR issued June 16th – Revisions to IFR’s 3 and 6

• Additional conforming changes

• Clarified payroll limitations
  – Employees (8 or 24 weeks)
  – Owners (8 weeks or 2.5 months (if using 24 week CP))
IFR issued June 10th – Revisions to First IFR

- Starts to bring PPP Flexibility Act into Rules
- Clarified 60% payroll requirement will be interpreted as a proportional limit on nonpayroll rather than a threshold for receiving any forgiveness
- Clarified that new deferral terms relate to all PPP loans
IFR on Loan Forgiveness (May 22nd)

- Concept of Paid or Incurred and Paid Eligible for Forgiveness
- Payroll Costs:
  - Bonuses and hazard pay are allowable
  - Line 9 (all subject to $100k annualized max – currently $15,385, maybe higher)
    - For owner-employees (W-2 in S-corp or C-corp), use 2019 W-2 wages and HC and RP contributions allowable
    - For SE use 2019 Schedule C, Line 21, no HC or RP costs
    - For General Partners, use 2019 K-1 reduced by various amounts, no HC or RP costs
  - Only include employer portion of HC and RP costs
- Nonpayroll Costs – example shows that more than 2 months of allowable costs for utilities/rent will be eligible for forgiveness
- Still don’t have firm guidance on:
  - Prepayments (likely not)
  - Amounts in arrears (i.e. 2019 bonuses or RP contributions)
SBA Review Procedures (May 22nd)

• Will have 6 years to review
  – Potential impact on future merger and acquisitions
• Elements of review
  – Eligibility (except for “necessity” safe harbor if < $2 million)
  – Loan amount and use of proceeds
  – Loan forgiveness
• Unclear if $2M threshold for “total review” will be measured at Affiliated Group Level or individual loan
Forgiveness Basics
Payroll Costs

Salaries, wages (includes PTO, sick pay, separation payments, etc.) – limited to $100,000 annualized

Group health care benefits

Retirement benefits

Employer portions of state/local payroll taxes
Payroll Costs

- For bi-weekly or more frequent payrolls - *Alternative Payroll Covered Period (APCP)* starting first day of first pay period following PPP loan disbursement
- Submit on *Schedule A* and *Schedule A Worksheet*
- Flexibility to include costs incurred during CP or APCP and *paid on or before next regular payroll date*
- Potential to include payroll costs incurred prior to the CP or APCP *if paid during the CP or APCP*
- Subject to max during the period ($100,000 prorated for period)
- Non-cash payroll costs (healthcare, retirement, ER state taxes) must be paid during CP or APCP
Payroll Costs – Limitations on Cash Compensation

8 – week period - $15,385
- Employees – based on comp during CP/APCP
- Owners – based on 2019 (W-2, Schedule C or K-1)

24-week period
- Employees - $46,154 (24/52 * $100k max)
- Owners - $20,833 (2.5 months of 2019 amount subject to $100k max)
Payroll Costs – Non-cash Costs

• Non-cash payroll costs (healthcare, retirement, ER state taxes) must be paid during CP or APCP

• For owners-
  – Health care costs excluded for SE, GP and S-Corp Owners, only included for C-corp owners
  – Retirement contributions
    ◊ Excluded for SE and GP
    ◊ Included for C & S-corp owners, capped by 2019 contribution and either 8/52nds (8 week CP) or 2.5 months (24 week CP)
Non-Payroll Costs

- Interest mortgage obligation
- Rent
- Utilities
- Interest on other debt obligations*

- Contracts must be in place as of 2/15/20
- All the above are considered non-payroll costs

* May not be considered for forgiveness
Non-Payroll Costs

• Flexibility to include costs incurred during the CP if paid on or before next regular billing date
• No prepayments of future interest on mortgage debt, but unclear about rent and utilities expenses
• Potential to include additional non-payroll costs incurred prior to the CP if paid during the CP
• Max forgiveness amount of 40% for non-payroll costs
# Forgiveness – Items to Consider

<table>
<thead>
<tr>
<th>#1 How much did the entity spend on allowable costs? (lines 1-4)</th>
<th>#4. What was the PPP loan amount? (line 9)</th>
<th>#5. Was enough of that spending on payroll? (40% limit on non-payroll) (line 10)</th>
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<tbody>
<tr>
<td>#2. Did the entity maintain wages at least 75% of prior quarter? (excludes high earners) (line 5, Schedule A, line 3)</td>
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<td>#3. Did the entity maintain FTEs? (includes re-hires thru 6/30) (line 7, Schedule A, line 13)</td>
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#6 Did entity receive EIDL advance (up to $10,000)?
Resources

• Treasury Website –
  https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses

• SBA Website –
  https://www.sba.gov/funding-programs/loans/coronavirus-relief-options

• CLA’s COVID Relief Center
  Bi-weekly Livestreams
  https://www.claconnect.com/COVID19

• US Chamber of Commerce
  https://www.uschamber.com/coronavirus