



COVID-19

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**Coronavirus / COVID-19
Response Team**

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**Update on Paycheck
Protection Program
Expansion**

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Today's Topics

- PPP Expansion's Additional Appropriations
- SBA Published Guidance and FAQs

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PPP Expansion's Additional Appropriations

Paycheck Protection Program (PPP): Conceptual Overview

- Small business loans that may be wholly or partially forgiven
 - Support cash flow to cover payroll costs (at least 75% of loan) and rent, mortgage interest and utility payments
 - Loans may be forgiven (wholly or partially) based on use of funds and employee/wage retention
 - Available to businesses with 500 or fewer employees (maybe more depending on industry and other factors)
 - Also available to self-employed/"gig economy" workers and 501(c)(3) non-profit organizations
 - Available until June 30, 2020 (or until funds exhausted)

PPP: Executive Summary of Terms

- Temporary form of Section 7(a) SBA loan
- Size of loans to equal 250% of borrower's average monthly payroll costs
 - Maximum loan size is \$10 million
- Personal guarantees and collateral not required
- No "credit elsewhere" testing
- No principal, interest or fee payments for six months
- No fee to apply or process; no pre-payment penalties
- PPP loans forgivable to the extent used for certain expenses during eight weeks post-loan, subject to employee retention and compensation conditions
- At least 75% of loan spend must be toward "payroll costs"

Additional PPP Appropriations

- Additional PPP appropriations approved by Congress on April 23
- Increased PPP funding from \$349 billion to \$659 billion via CARES Act amendments
 - Initial \$349 billion was exhausted on April 16
- Of the \$310 billion increase in PPP funds:
 - \$60 billion is set aside for smaller lending institutions, such as community financial institutions, small insured depository institutions and smaller credit unions
- No changes to PPP terms or conditions (other than additional funding)

Next Steps for Pending / New Borrowers

- If you already applied, contact your bank to determine the status of your application
 - When the initial appropriations maxed out, banks and the SBA stopped approving loans
 - Make sure you understand status of application
- Consult with your professional advisors to determine eligibility if you have not yet applied for a PPP loan
 - Need to move quickly and collect required information for PPP and, potentially, “KYC”

Other SBA Loan Appropriations

- Increased appropriations for Economic Injury Disaster Loan (EIDL) program by \$50 billion
- Increased appropriations for EIDL emergency advance program by \$10 billion
- Increased appropriations for SBA salaries and expenses by \$2.1 billion
 - SBA was criticized for being understaffed and technologically unprepared for initial wave of PPP loan applications

SBA Economic Injury Disaster Loans (EIDLs)

- The EIDL program is distinct from PPP (not forgivable)
- Terms modified through December 31, 2020
- Loans up to \$2 million
- Interest rates capped at 3.75% (2.75% for NFPs)
- Repayment term up to 30 years (initial 4-month payment deferral)
- Loans may be used for working capital issues resulting from COVID-19
- Loans > \$25K to be secured to the extent possible (including by real estate)
- Guarantee requirement waived for loans below \$200k

SBA EIDLs (cont.)

- Funded directly by U.S. Treasury (unlike PPP loans)
- Temporary expansion of eligible borrowers (e.g., ESOPs)
 - Latest legislation further extends eligibility to agricultural enterprises with 500 or fewer employees
- Suspended “credit elsewhere” testing
- Relaxed financial information requirements
 - May rely on credit scores rather than requiring copies of all tax returns, for example
- No cost or fee to apply; not obligated to accept funds

SBA EIDL Emergency Advances

- SBA Emergency Advances via EIDL Applications
 - Allows a business that applies for an EIDL to obtain expedited access to capital through an emergency grant that is not required to be repaid
 - Grant of \$10,000 to maintain payroll, provide sick leave, service debt, increased costs, etc.
 - Available through December 31, 2020

SBA Published Guidance and FAQs

Looking Back...

- To date, the SBA has issued and/or published...
 - an Interim Final Rule governing the PPP generally
 - an Interim Final Rule regarding the application of the SBA's affiliation rules
 - an Interim Final Rule regarding additional eligibility criteria and requirements for certain pledges of loans
 - borrower and lender application forms
 - program "fact sheets" for borrowers and lenders
 - a summary of the applicable affiliation rules
 - responses to certain Frequently Asked Questions (which the SBA has updated numerous times)
- Members of Congress have also issued statements of intent or published summaries, some of which are incorrect or additive

Round-Up of Recent SBA Guidance and FAQs

- **FAQ #2:** Clarifies that "small business concerns" are eligible for PPP loans, even if they have more than 500 employees.
 - A business can qualify if it meets the SBA employee-based or revenue-based size standard corresponding to its primary industry (based on NAICS code).
 - A business can also qualify as a "small business concern" if it met both tests in the SBA's "alternative size standard" as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 million and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the PPP application is not more than \$5 million.

Round-Up of Recent SBA Guidance and FAQs (cont.)

- **FAQ #7:** Confirms that the \$100,000 per employee cap on annualized salary for purposes of calculating “payroll costs” only applies to cash compensation (and not to non-cash benefits).
- **FAQ #11:** Reminds PPP loan application signatories that they are representing to the lender and to the U.S. government that they are authorized to make the certifications contained in the Borrower Application Form (including with respect to the borrower and each owner of 20% or more of the borrower’s equity).

Round-Up of Recent SBA Guidance and FAQs (cont.)

- **FAQ #14:** Provides flexibility to PPP loan applicants to calculate “average monthly payroll costs” and their number of employees based on either calendar year 2019 or the 12-month period prior to the loan.
- **FAQ #15:** Confirms that amounts paid to an independent contractor or sole proprietor should be excluded from the borrower’s “payroll cost” calculations, since the independent contractor or sole proprietor may itself be eligible for a loan under the PPP (if it satisfies the applicable requirements).

Round-Up of Recent SBA Guidance and FAQs (cont.)

- **FAQ #16:** Directs borrowers to include the employee's share of federal payroll taxes in its calculation of "payroll costs," but to exclude the employer-side share of federal payroll taxes.
- **FAQ #20:** Confirms that the eight-week "forgiveness" period begins on the date the lender makes the first disbursement of the PPP loan. Further states that the lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.

Round-Up of Recent SBA Guidance and FAQs (cont.)

- **FAQ #31:** While primarily directed at "large companies with adequate sources of liquidity," reminds all borrowers to assess their "economic need" for a PPP loan under the standard established by the CARES Act and PPP rules and regulations.
 - Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."
 - Borrowers must make this certification in good faith, taking into account their current business activity and ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to their business.
 - A borrower may return its PPP loan "in full" by May 7 if it believes its certification was invalid based on this latest guidance.

Round-Up of Recent SBA Guidance and FAQs (cont.)

- **Third Final Interim Rule:** Confirms that partners in a partnership may not submit a separate PPP loan application as a self-employed individual.
- Self-employment income of “general active partners” may be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by or on behalf of the partnership.
- A partnership should submit only one PPP application and, presumably, may include the Schedule K-1 earnings of each “general active partner” as salary (subject to the \$100,000 annualized cap).

Looking Ahead...

- Still waiting on SBA final interim rule / guidance on key forgiveness issues.
- Sampling of significant open questions:
 - How, exactly, do we calculate FTE employees?
 - How, exactly, do we calculate decrease in loan forgiveness percentage based on reductions in salaries and wages?
 - Are forgivable costs determined on accrual or cash basis?
 - Must we hire back all previously reduced FTEs by June 30 in order to mitigate the negative impact of early lay-offs on our forgiveness percentage?
 - Many, many others... still waiting on guidance.

PPP: Enforcement and FOIA Reminders

- Application is very clear that if PPP funds are procured or utilized impermissibly, then the government retains the ability to pursue hefty fines, civil and/or criminal charges
- False Claims Act will also incentivize enforcement
- Fine print of application states the following information may need to be provided in response to a FOIA request: *“other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity”*



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