



# PAYCHECK PROTECTION PROGRAM (PPP) FOLLOW UP

(SUBJECT TO CHANGE BASED ON EXPECTED GUIDANCE FROM THE SBA)

**GORDON SCHWARTZ**  
TAX PARTNER

April 29, 2020

# UPDATES - Available Borrowing

- Program resumed April 27<sup>th</sup> - additional \$310B - first round went very quickly
- Initial PPP program
  - Funded approx. 1.7M loans from approx. 5,000 banks.
  - Approx. 75% of the loans were for \$150K or less
  - Approx. \$16B went to Illinois businesses
- The following certification is required in every application
  - Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant - repayment date 5/7/20 (over \$2B has already been returned.) - FAQ 31.
  - Per the SBIA - Whatever you do, remember there are real people hurting who need access to this program. Do what you honestly believe to be the right thing under the law, and for small business employees, and you should be in a strong, legally defensible, and honorable position.



# UPDATES - Available Borrowing

- According to Secretary Mnuchin on April 28<sup>th</sup>, the SBA will undertake a “full review” of any loan that exceeds \$2M.
  
- **Message from Jennifer Roberts, CEO of Chase Business Banking**

Congress has approved additional funding for the Paycheck Protection Program, which is encouraging news for thousands more of our small businesses.

We'll begin submitting applications as soon as the SBA gives the green light. We never stopped working our large application queue because we know how important this money is for your business.

I wish we could help every business through this program, but funds could run out again quickly and we have preexisting applications in our queue. We will continue to process and will submit applications until funds are exhausted.

At this time, we are not taking new applications, but will keep monitoring the funding availability and may consider taking new applications in the future.

# UPDATES - Available Borrowing - Clarifications

- Income allocations or guaranteed payments of partners should be included in the eligible loan calculation (up to \$100K) at the partnership level.
- Private equity funds/hedge funds including their management companies are not eligible for PPP loans.
- Private equity portfolio companies remain eligible for PPP loans but are subject to the affiliation rules for determining the number of employees.
- Do foreign employees count in the 500 employee limit? Unclear - SBA FAQs seems to be inconsistent the SBA affiliation rules
- ESOP owned businesses are eligible.
- Businesses that are currently in a bankruptcy proceeding are ineligible.
- Foreign owned companies are eligible to apply.



# UPDATES - Available Borrowing - Clarifications

- Deductibility of PPP funded expenses - still uncertain
- The ability to defer corporate payroll taxes without penalty through the date of loan forgiveness has been confirmed.
- While inconsistent between the law and SBA - we believe that unused funds that term out into permanent loans must be used for qualifying expenses but not necessarily 75/25.
- We are still looking for GAAP guidance on treatment of forgivable loans and bank guidance for covenant calculations. Certain CARES Act rules create new M-1s - such as deferred payroll taxes.



# UPDATES - Available Borrowing - Clarifications

- Self employed individuals - loan amounts are based on 2019 Schedule C profits up to \$100,000 - loans became available on April 10<sup>th</sup>, so a lot of folks got shut out in round one.
- Loans are available with similar methodology - 2.5 X average monthly payroll costs (including 2.5 months of profit from the Schedule C)



# Expected Forgiveness Amount

- Forgivable Loans: Amounts of the PPP loan that were used during the eight weeks following receipt of the proceeds (covered period) for:
  - Payroll costs, and to pay the following obligations in effect on Feb. 15, 2020 for mortgage interest (other interest does not qualify for forgiveness), rent (does not seem to apply only to real property), and utilities. Payroll costs must be 75% of the covered costs.
  - The eight week period begins on the day the loan is funded (first disbursement.) The loan must be funded within ten days of the loan approval. There is no current way to delay the funding once approved.
  - At the completion of the eight week period, the loan recipient must apply for forgiveness and provide documents verifying the payroll, pertinent FTE information, and other qualifying expenses to the bank (keep detailed records and consider using a separate bank account!) The bank has 60 days to certify the forgiveness.

# Expected Forgiveness Amount

- Data to calculate the expected forgiveness amount for the covered period
  - Payroll Costs
    - Gross payroll, that includes wages, bonuses, tips, PTO or other paid leave, severance (limited to \$15,385) ( $\$100,000 * 8/52$ ) but does not include paid leave required by FFCRA
    - Health care costs for employees
    - Contributions to qualified retirement plans
  - Payments of state/local taxes based on compensation
  - Self-employment income of partners or owners operating as a self employed individual (not payments to non-owner independent contractors)
  - Amount paid on leases, mortgages and utility contracts that predate Feb. 15, 2020 and are business expenses (shown on 2019 Form 1040 Sch C for sole proprietorships)
- Loans that are not forgiven will have a maturity date of two years from the date of funding. There are no required principal or interest payments for six months (interest will begin accruing at 1%.) There is no prepayment penalty.





# Open Questions on Expected Forgiveness Amount

- **Must qualified retirement plan contributions during the 8-week covered period be converted to a monthly amount?**
  - For loan approval an annual contribution was part of the 12 month average, which essentially converted the annual contribution to a monthly amount
  - Current guidance does not require one time contributions during the covered period to be pro-rated to match the 8-week period, it would not be unreasonable for future guidance to require such allocation
- **What interest is included?**
  - Statute includes debt on real and personal property but not capital leases. No current disallowance of mortgages or rental payments to related parties, but future guidance may change that position.
- **Must “utilities” be provided by a public utility company, an organization that maintains the infrastructure for a public service and are subject to regulation?**
  - If no, can internet, cell phone, TV cable, trash collection, etc. be counted in addition to electricity, water, gas and sewer?
  - Does this need to be answered, given the limitation on forgiveness of non-payroll cost? Maybe to prove funds were spent only as allowed even if not forgiven.
- **“Costs incurred and payments made” during the covered period are eligible for forgiveness. How should “costs incurred” be applied?**

# Reductions of Expected Forgiveness Amounts

- **No reduction** if all proceeds are used for forgivable purposes and employee headcount and compensation levels are maintained
  - Supports DOL's requirement that at least 75% of loan forgiveness be payroll costs
  - 8-week covered period is 56 days while the loan was based on 76 days (2.5 mos.), therefore a constant payroll costs would result in approx. 75% of the loan proceeds being spent on payroll costs
- **Reduction** required if:
  - The FTE count during the covered period is less than the pre-COVID-19 levels
    - Avg. FTEs for eight week loan period (numerator) as compared to Avg. FTEs per month from February 15, 2019 - June 30, 2019 OR January 1, 2020 - February 29, 2020 (denominator). There are special rules for seasonal businesses.
    - FTE count during the covered period can be increased by rehiring before June 30, 2020 the number of FTEs terminated February 15, 2020 through April 26, 2020
  - For employees with < \$100,000 of 2019 compensation, the wage and salary payments during the covered period are less than 75% of the wage and salary amounts for the next earliest full calendar quarter (Q1-2020 for PPP loan received in Q2 of 2020)
    - Wages actually paid to such employees during the covered period can be increased by payments made before June 30, 2020 to re-hired employees who were terminated February 15, 2020 through April 26, 2020



## FTEs

- A full-time employee (FTE) is someone who normally averages at least 30 hours per week or 130 hours per month - Section 4980H absent further guidance.
- PPP loan forgiveness calculations require FTEs be determined for each payroll period (for purpose of determining the average.)
- Any one hired as full-time or normally averaging the hours for the pay period to be considered full-time is treated as one FTE
- All variable or part time hours worked by employees (not to exceed the full time level) are summed and then divided by the full time hour level for the applicable pay period



Questions?