



CABALLERO FIERMAN
LLERENA + GARCIA LLP
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PPP Loan Program UPDATE

Dear Valued Clients,

At CFLG we are committed to keeping our clients updated and informed of the latest developments regarding the popular Paycheck Protection Program. As you may already be aware, funding for the program was exhausted last week and Congress is currently in negotiations to appropriate additional funds for the program.

Reminder that the PPP program is a federal disaster relief program and borrower must make certain representations to the federal government:

“Borrower Requirements,” a business “shall make a good faith certification” that, among other things, “the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient.”

On Monday April 20, 2020, U.S. Senator Marco Rubio (R-FL), Chairman of the Senate Committee on Small Business and Entrepreneurship, announced his Committee would conduct aggressive oversight of the Paycheck Protection Program (PPP), including whether companies made false certifications to the federal government to receive PPP loans.

- A. If you have already submitted an application** and you were informed by the bank that there are no funds at this time, make sure you are staying in contact with your bank. Therefore, when additional funds are provided your application is ready for approval. Be sure to follow up to ensure your bank has all the information they need to process your application quickly.
- B. If your bank is not participating or responding to you** consider Fintech lenders such as PayPal, QuickBooks or Square. Here is a link to a listing of approved FinTech lenders and other resources of PPP Lenders <https://www.lendacademy.com/all-of-the-fintechs-involved-in-ppp-loans/>
- C. If you have been approved by your bank for a PPP loan** you should receive funding within 10 days of your approval. We recommend that you deposit these funds in a separate bank account and keep very detailed records of the use of those funds to ensure compliance with the program requirements and loan agreements. Remember, this is a loan and you must apply for the loan forgiveness and meet all the requirements in the loan agreement and PPP guidelines to have the loan forgiven. Unfortunately, at this time, the Treasury has not issued much guidance on the loan forgiveness. The following are responses to some frequently asked questions on what we know now:

Forgiveness of loan

When does the 8-week period begin to determine the amount of the forgiveness for the PPP loan?

The 8-week period begins on the date the lender makes the first disbursement of the loan. The lender must make the first disbursement of the loan no later than 10 calendar days from the date of the loan approval.

What are the acceptable uses of the PPP funds for businesses other than self-employed individuals?

Payroll costs, health care benefits, mortgage interest payments, rent, utility, interest payments on debt incurred prior to February 15, 2020, and/or refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

What are the acceptable uses of the PPP funds for self-employed individuals?

- Owner compensation replacement (calculated based on 8/52 of 2019 net profit from Form 1040 Schedule C)
- Employee payroll costs (as defined by the interim rule)
- Business mortgage interest payments on real/personal property
- Business rent payments
- Business utility payments
- Interest payments on debt obligations incurred before February 15, 2020
- Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020

Note that the individual must have claimed or be entitled to claim a deduction for the included expenses on 2019 Form 1040 Schedule C.

What amounts will be eligible for forgiveness for self-employed individuals?

The amount of the loan forgiveness will depend on the amount spent during the 8-week period on:

- Payroll costs as defined by the interim rule (does not include benefits for owners)
- Owner compensation replacement (limited to 8/52 of 2019 net profit and excluding any qualified sick or family leave equivalent amount for which a credit was claimed under FFCRA)
- Interest payments on mortgage obligations for real/personal property incurred before February 15, 2020
- Rent payments on lease agreements in force before February 15, 2020
- Utility payments under service agreements dated before February 15, 2020

*Note that for interest, rent and utility payments, the amounts must be deductible on Form 1040 Schedule C.

Are employee federal withholdings and employer payroll taxes on wages for the 8-week period included in payroll costs?

The employee federal withholding is included in allowable payroll costs for the purposes of determining the amount to be forgiven. The employer federal payroll taxes (i.e. FICA and Medicare taxes) imposed on the gross payroll are not eligible payroll costs for the loan forgiveness calculation.

What are the restrictions on determining the amount of loan forgiveness for businesses other than self-employed individuals?

At least 75% of the loan proceeds must be used for payroll costs. If salaries decrease by more than 25% for any employee who made less than \$100,000 annualized in 2019 OR if the number of FTEs decreases, the forgiveness amount will be reduced. A loan calculator to assist in the determination of the forgiveness amount will be coming soon.

Do qualified sick and family leave wages which are eligible for a tax credit under the FFCRA count toward payroll costs for the purpose of the forgiveness portion?

For businesses that take this credit, the wages will be excluded from the determination of payroll costs.

What about if the business had employees who left for their own reasons? Or need to be fired due to performance issues? Is the loan forgiveness still reduced for those employees?

More guidance is needed on this issue. As the statute is written in the CARES Act, the forgiveness is tied to employee count comparisons and specific employees and whether their pay was substantially reduced.

Are the expenses when determining forgiveness on a cash or an accrual basis?

More guidance is needed on this issue. The guidance provided discusses “payments”, but further clarification is needed.

Are these expenses tax deductible if the loan is ultimately forgiven?

More guidance is needed on the treatment of the expenses related to the forgiveness portion of the loans. Based on what is known at this time, there is no specific provision in the CARES Act that makes these expenses nondeductible. However, IRC Section 265 may apply which states that no deduction is allowed for expenses attributable to tax-exempt income. However, IRC Section 265 may apply which states that no deduction is allowed for expenses attributable to tax-exempt income.

Is the forgiveness of the loan taxable income?

No, the forgiveness of the loan does not constitute taxable income.

Are payments to related parties (such as rent) included in amounts eligible to be used to determine forgiveness?

More guidance is needed in this area.

What documentation is required to be submitted to the lender for self-employed individuals to support loan forgiveness?

The following documentation is required:

- certification that the documentation provided is true and correct and the amount for which forgiveness is required was used to retain employees, and make interest, rent and utility payments
- If the self-employed individual has employees, Form 941 and state quarterly tax reporting forms or equivalent payroll processor records that correspond to the covered period
- Evidence of business rent, mortgage interest payments or utility payments for loan proceeds used for these purposes
- 2019 Form 1040 Schedule C

Relationship between PPP and other SBA loans

Can a qualified entity apply for both the PPP and other SBA disaster loans?

Yes, borrowers may apply for the PPP and other SBA financial assistance, including disaster loans and Section 7(a) loans. However, you cannot use the proceeds from the PPP for the same purpose as your other SBA loan(s). Loan proceeds would need to cover payroll for a different period or other qualifying costs. This includes the up to \$10,000 grant available with the Section 7(b)(2) loans- Economic Injury Disaster Loans (EIDL).

What happens if a business applies for PPP and receives the up to \$10,000 grant from an EIDL?

The amount of grant received (up to \$10,000) will reduce the forgiveness amount of the PPP.

The CARES Act included a deferral of the employer portion of the social security tax until 2021/2022. Is this affected by a business' participation in the PPP?

Yes. The deferral of the employer portion of the social security tax is not available to participants in the PPP. See [IRS FAQs #4](#) for the details of how the deferral works.