

## **YOUR PPP LOAN: A reason for you to reflect... and act.**

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The Paycheck Protection Program (PPP) became law on March 27, 2020. Since then banks and businesses have been rightfully consumed sorting through this unprecedented economic relief program. The law has not changed. But a stream of regulations issued by the SBA and U.S. Treasury in April and various commentaries put a chill on a program that has a primary goal of providing a sort of bridge financing to maintain employment. FAQ 46 issued May 13, 2020, and SBA's PPP Loan Forgiveness Application released May 15, 2020, have provided much needed clarification to critical areas of the PPP.

I still suggest that you (PPP borrowers) take a reflective and positive approach to your PPP loan. That starts with a good understanding of the law, the regulations, and the facts.

The PPP law provides that **any** business is eligible for a PPP loan if it has 500 or fewer employees when including affiliates. Moreover, under SBA rules, some businesses with more than 500 employees are eligible for PPP loans.

The PPP law requires you to provide a "good faith certification that the uncertainties of current economic conditions makes necessary the loan application to support ongoing operations of the eligible recipient." This good faith certification language in the law has not changed. What has changed is SBA and Treasury have issued regulations that address the certification.

The primary regulatory language issued at different times in April that chilled prospective PPP borrowers tells borrowers to "carefully review the required certification," and accompanying FAQs mention "large companies" and the borrower's "ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business." These regulatory items provide no definitions, formulas or time frames, and those omissions create regulatory ambiguity.

On May 13, 2020, FAQ 46 was added to provide that PPP loans with an original principal amount less than \$2 million will be deemed to have made the required good faith certification. FAQ 46 provides much needed clarification. Still, previous FAQs that address the certification create a facts and circumstances test for the good faith certification for loans over \$2 million. Notably, FAQ 46 goes on to provide that "SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance...", and if SBA determines the borrower lacked an adequate basis for the certification, the borrower will not be eligible for loan forgiveness. With FAQ 46 repeating the inclusion of

“other PPP loans as appropriate,” loans under \$2 million still have some risk of being reviewed, and the certifications brought into question.

So, let’s document the facts.

The essential parts of the good faith certification are 1) uncertain economic conditions, and 2) the PPP loan is necessary to “support” ongoing operations. I suggest starting with a list of factors for each part of the certification along the lines discussed below.

### **Macro Factors.**

2020 first quarter (ending March 31) GDP contracted by 4.8%. The contraction did not really begin until March, yet the whole quarter was negative. The second quarter GDP could be worse.

Unemployment for April 2020 is reported at 14.7%, with footnotes that indicate it was higher. May unemployment is expected to be worse.

More recent reports indicate economic recovery will be prolonged—it will not be a “V” recovery.

COVID-19 is still with us. There is no cure. There is no vaccine. The more you read about COVID-19 the more you understand that the scientists still don’t understand it. We are told there is a risk of a resurgence and to expect another COVID-19 “season” like the flu.

(Does that move your uncertainty needle?)

### **Your Market and Business.**

Few businesses can avoid an adverse impact from the levels of economic downturn already experienced, much less what is still expected ahead. You should assess how this macro backdrop impacts your market and business. Some starter questions for that assessment include the following:

- How are your major customers or markets affected?
- How are your major suppliers affected?
- How are the logistics of your supplies and products affected?
- What steps (employment cuts) do you take if income drops 10%, 20%...?
- What is the impact on your business if significant numbers of staff or key personnel cannot work due to COVID-19?
- What government restrictions could adversely impact your business?
- How long will current sources of cash last through various scenarios?

I expect most of you did this assessment weeks ago, and you don’t need me to tell you how to assess your risks. My point is you should document your COVID-19 risk assessment in an organized manner. That documentation could include business and industry reports, internal reports, various scenario and updated budgets, and minutes or detailed notes that reflect board and

management **deliberations** on this information. Think in terms of highlighting your corporate decision-making process and governance.

Your organized documentation of your COVID-19 risk assessment will be the foundation of your application for the essential part of your PPP loan: FORGIVENESS.

### **PPP Loan Forgiveness.**

To get your PPP loan forgiven, your PPP loan funds must be used for specified expenditures within 8 weeks of your receipt of your PPP loan funds. On May 15, 2020, SBA released the PPP Loan Forgiveness Application. The Loan Forgiveness Application includes instructions that “address compliance burdens and simplify the process,” particularly as to the 8-week spending period.

The Forgiveness Application allows for an “alternative payroll covered period” that aligns with the borrower’s regular payroll cycle. And it provides flexibility to include payroll and allowable non-payroll costs paid or incurred during the 8-week spending period.

I still recommend you use a planning tool or spending schedule that shows i) the date you received your PPP loan funds, ii) when you pay or incur expenses eligible for forgiveness, and iii) when those expenses will be paid so as to be included in the forgiveness spending period. A planned schedule for your PPP spending will help determine whether the alternative payroll covered period is better, and the applicable dates for substantiating expenses incurred or paid.

SBA’s release of the Loan Forgiveness Application confirms that additional forgiveness rules will be issued. The PPP law provides that the forgiveness application must include payroll tax reports and receipts for payment of other allowable expenses, and certification that the information is true and correct. Now that the Loan Forgiveness Application is available, start working through it with the supporting information as that information is generated.

The PPP law provides that the PPP lender makes the forgiveness determination. Under current rules, the payroll costs will be the biggest factor in the forgiveness. If your PPP lender does not use its own PPP worksheet format, you should prepare the payroll information submitted for forgiveness using the same format you used in your PPP loan application. The forgiveness application should be well organized, like a transaction transcript. The completed spending schedule could be a good summary cover page.

You are not in partnership with your banker. But you and your banker should have the common goal of getting the PPP loan forgiven for as much as possible as soon as possible. Regular communication between you and your PPP banker during the 8-week spending period should lead to a finely tuned spending schedule, a well-organized loan forgiveness application, and keep all of you current on the regulations still to come.

The PPP is a good program that can deliver a lot of needed relief across a lot of businesses. As with any source of funds, it should be approached with respect and order. The PPP is an important program. What you do with your PPP loan is important. Please reflect... and act.