



COVID-19 UPDATE | MAY 4, 2020

**updated May 7, 2020*

SBA PAYCHECK PROTECTION PROGRAM UPDATES: BORROWER ELIGIBILITY QUESTIONED AND TAXABILITY OF "TAX FREE" LOAN PROCEEDS

The Small Business Association's (SBA) Paycheck Protection Program (PPP) has been seen as a lifeline for small businesses impacted by the COVID-19 pandemic. However, the program has seen its share of scrutiny since its launch as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act in late March. Applicants have faced numerous challenges, including frustrations with the application process; confusion about eligibility requirements; a shortage of funds; and questions around use of funds and loan forgiveness.

The situation is still very fluid, with new guidance being issued continually. Below is a summary of the most recent PPP updates concerning borrower eligibility and taxability of loan proceeds:

SBA Issues Guidance on Borrower Eligibility

Since the launch of the program, the SBA has stated that business owners who apply for a PPP loan are required to certify in good faith that current economic uncertainty makes the loan request necessary to support their ongoing operations. Applicants are also required to certify that all information in their application and supporting documents is true and accurate. Business owners who knowingly make a false statement to obtain a PPP loan could face jail time up to 30 years and/or fines up to \$1 million.

On April 23, 2020 the SBA issued additional guidance, reminding larger businesses with adequate sources of liquidity of their responsibility to certify their eligibility for the PPP. Although the CARES Act voids the usual SBA requirement that borrowers must be unable to obtain credit elsewhere, borrowers must still certify in good faith that their loan request is necessary to maintain their operations, taking into consideration their current business activity as well as their ability to access other sources of funding.

On April 28, 2020 the SBA issued additional guidance, setting a May 7, 2020 deadline for borrowers to repay PPP funds if they are unable to certify in good faith that the loan is necessary to support their ongoing operations given the current economic uncertainty. On May 5, 2020, this repayment deadline was extended to May 14, 2020. Any borrower that applied for a PPP loan prior to the issuance of this guidance, and repays the loan in full by May 14, 2020, will be deemed by the SBA to have made the required certification in good faith.

The SBA also made clarifications regarding ineligible businesses, which now include hedge firms, private-equity firms, portfolio companies of private-equity funds, hospitals owned by governmental entities, and businesses that receive revenue from legal gaming revenue. Businesses in bankruptcy are also ineligible.

Additionally, on April 28, 2020 Treasury Secretary Steven Mnuchin announced that the SBA will conduct a full audit of any PPP loan over \$2 million, to ensure the borrower's legitimate economic need before loan forgiveness will be granted.

IRS Issues Guidance on Taxability of Loan Proceeds (Notice 2020-32)

Although the CARES Act indicates that PPP forgiven loan proceeds are not taxable, on April 30, 2020 the IRS announced that a taxpayer who receives a PPP loan is not permitted to deduct expenses paid out of forgiven loan proceeds. This, in turn, makes the loan proceeds taxable after all.

Additionally, the IRS announced that businesses who receive PPP loans may defer FICA tax payments until receiving a decision on the forgiveness of their loan. This will help relieve the burden of paying payroll taxes during the 8-week period post-closing, allowing borrowers to maximize the use of loan funds.

There is still a chance that the IRS notice on non-deductibility of expenses noted above could be overturned. However, at the moment, we have to assume this is final guidance and plan accordingly.

We expect to see additional guidance released in the coming weeks, and we will continue to analyze the guidance we receive and keep you abreast of any updates. If you have any questions, please don't hesitate to contact us at ppp@crrcpa.com, or visit our COVID-19 resource center at www.crrcpa.com/covid19 for additional information.

We're in this together.