

October 7, 2020

Dear Friends and Colleagues,

Late last week, the SBA issued some new guidelines for Paycheck Protection Program (PPP) borrowers who are in the process of selling their businesses. These guidelines are addressed towards the bottom of this letter.

In the meantime, it appears that most lenders are now prepared to take forgiveness applications for their PPP Loans. Before starting the process, please consider the following:

Some recommendations

1. Officially reach out to your lender. If they're open for applications, request a username and password for their portal to begin the process.
2. Make sure you are using the SBA Form 3508EZ. To qualify, only **one** of the following three statements need apply:
  - a. The borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the original PPP loan application;
  - b. The borrower did not reduce the annual salary or hourly wages of any employee by more than 25 percent during the Covered Period; and the borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period. (Reductions can be ignored if employees refused to come to work, were terminated for good cause, left voluntarily, or cut hours voluntarily;
  - c. The borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period; and the borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with safety or governmental requirements (such as the closing of a non-essential business, or reduction in services because social distancing requirements).

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3. Browse through some of the initial screens to get a sense for the application. Can you save a partially completed application and come back later? Can you go backwards and make changes? Can you skip certain questions if you don't have the information available?
4. Be organized. Have the numbers and the documentation ready to go before applying.
5. Don't rush to apply unless you're ready. The SBA still hasn't establish a firm deadline to get the forgiveness application in. In fact, the only quasi-hard date that's been mentioned is that borrowers will be required to make payments on the PPP loan ten months after the end of the covered period. Also, keep in mind that as of October 1, the SBA had received more than 96,000 loan forgiveness applications, and none had yet been processed.
6. Don't stress. For most business owners, reaching the forgiveness threshold shouldn't be a problem. Loans were granted using 2.5 payroll periods, and loan forgiveness will be judged using a maximum of 12 payroll periods. Exceeding these amounts shouldn't be an issue for most borrowers.
7. Crush the number. Whatever amount you borrowed, try to exceed this number on your forgiveness application by as much as possible. Consider using the longer covered period (24 weeks instead of 8) to make this happen. It is our belief that by showing the funds spent during the covered period well-exceed the borrowed amount, and by showing that the percentage used well-exceeds the 60% payroll requirement, the forgiveness application is less likely to be scrutinized.
8. Consider applying before the 24 week covered period is up. You don't need to wait until you've completed 24 weeks of payroll to apply. You can cut it off early and apply...if you feel your numbers are ready.
9. If possible, have a contact person at your lender to communicate with. If there's a problem with your application, ask to be notified of this by your lender before it is too late.

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10. Document as much as possible. There are still many gray areas in this process, and certain rules are getting changed on the fly. To protect yourselves, document your decisions and calculations.
11. If you're unsure or uncomfortable with the process or the results, consult with a financial advisor.

### Deductibility of Expenses

Many are still holding out hope that the expenses PPP funds were spent on will be deductible, even if the loan is forgiven. The government has clarified that the forgiven PPP loans are not taxable income, but they've also made clear that no deduction is allowed for an expense that was generated by these forgiven PPP funds. This would, they reason, be double-dipping.

However, many believe that Congress intended PPP expenses to be deductible. Lawmakers from both parties have voiced support for this position, but, so far, no legislation has been pushed forward.

### Automatic Forgiveness

Lenders are hopeful that legislation will soon pass which automatically forgives the smaller loans without the application process. Automatically forgiving all loans under \$150,000 would eliminate the application process for close to 3.9 million loans, about 86% of total. Again, with Congress currently at a standstill, if and when this will pass is anyone's guess.

### PPP Loans and the Sale of a Business

On October 2, the SBA issued guidelines regarding PPP loans and the sale of a business. These guidelines address both the sale of business stock (20% or more) and the sale of business assets (50% or more).

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If, prior to closing on a business sale, the PPP loan has been repaid or forgiven, then there isn't an issue. However, if a sale is pending and the PPP loan hasn't been forgiven, then the PPP lender must be notified in writing ahead of time and provided copies of the sales documents. Under this scenario, the lender may then approve the sale without the SBA's consent, if:

1. The borrower has used all of its PPP loan funds appropriately;
2. The borrower has submitted to the lender a complete loan forgiveness application, and;
3. The borrower has established an interest-bearing escrow account controlled by the PPP lender with an amount of funds equal to the amount of the PPP loan outstanding. This escrow account must state that these funds go to repay any remaining PPP loan balance, *plus* interest, if any amounts under the PPP loan are not forgiven.

If the above conditions aren't met, then the sale will require the approval of the SBA. This would be, as you can imagine, an involved and lengthy process

Should you have any questions about the above, please feel free to contact our office at any time.

Sincerely,



Tom A. McFerson, CPA, ABV  
Gatto McFerson, CPAs