CARES Act, PPP, and You

A Guide for Translators and Interpreters—NYCT June 2020

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Disclaimer—Please read carefully!

This webinar provides general information about the CARES Act, the PPP program, and other financial support programs, and should not be construed as providing financial, tax, or other professional advice. No warranty, implied or expressed, is assumed for the accuracy or applicability of any information provided or contained in any links referred to in this webinar. This webinar should not be acted on or relied on to make financial or any other decisions affecting your business or personal situation. Always consult a professional adviser, e.g., a CPA or bank, before taking any financial or tax decisions to establish whether a particular program will suit your specific circumstances.
Families First Coronavirus Response Act (1)

- Phase 2 of Congress’s Covid-19 response (Phase 1 supported vaccine research and development)
- Package of ca. $104 billion
- 2 weeks of paid sick leave (full pay) for quarantined employees
- 2 weeks of paid sick leave (2/3 pay) if caring for quarantined family member of a child

Families First Coronavirus Response Act (2)

- Up to additional 10 weeks of paid expanded family/medical leave (2/3 pay) for child care
- Applies to companies with <500 employees and some public employers (exemption for companies with <50 employees)
- Employers receive payroll tax credits for sick leave wages paid
CARES Act—Principal Features (1)

- Coronavirus Aid, Relief, and Economic Security (CARES) Act is phase 3 of Congress’s response
- Final size $2 billion, signed into law 3/27/2020
- Wide variety of healthcare-related provisions
- Economic Stabilization Fund (Main Street Lending Program): up to $500 billion
- Paycheck Protection Program (PPP) (see separate slides)

CARES Act—Principal Features (2)

- Expanded SBA Economic Injury Disaster Loans (EIDL) (see separate slides)
- Various tax credits, deferrals, and deductions for employers
- Filing/payment date for personal federal income tax return postponed to 07/15/2020
- This also applies to unincorporated entities such as LLCs (Note: This does not apply to S-Corps!)
CARES Act—Principal Features (3)

- $Q_1$ estimated tax payments postponed to 07/15 (But: unchanged due date of 06/15 for $Q_2$ estimated payments!)
- Recovery rebates (stimulus payments) (see separate slides)
- Federal Pandemic Unemployment Compensation: $600/week unemployment benefit top-up (set to expire in late July 2020)

CARES Act—Principal Features (4)

- Pandemic Unemployment Assistance (PUA) (see separate slides)
- Payments/interest accrual on federal student loan repayments and garnishments suspended until 9/3/2020
- Other provisions applying to federal student loans
- Various provisions for retirement plans/accounts
Recovery Rebates (Stimulus Payments) (1)
- This is not a “gift” from the federal government!
- It is an advance refundable credit against 2020 federal income tax
- $1,200 for individuals, $2,400 for joint filers, plus $500 per child under 17
- For U.S. taxpayers (including “resident aliens” and U.S. citizens living abroad) with adjusted gross income (AGI) of up to $75k or $150k for married filing jointly (MFJ)

Recovery Rebates (Stimulus Payments) (2)
- Phase-out of $5 per $100 applies to AGI in excess of threshold up to $99k/$198k
- Taxpayers who are not eligible for the stimulus payment will still benefit from the tax credit in the same amount ($1,200/$2,400) on their 2020 federal income tax return
- Paid by direct deposit into taxpayer bank accounts that are known to the IRS
- Otherwise paid by check “in the mail”
Pandemic Unemployment Assistance (1)

- Independent contractors who receive 1099s from their clients may be eligible for Pandemic Unemployment Assistance (PUA)
- Applicants must not be eligible for other benefits, including under other programs (e.g. PPP)
- Applicant or household member must have been diagnosed with Covid-19
- Or child(ren) unable to attend school because of Covid-19
Pandemic Unemployment Assistance (2)

- Or unable to reach place of employment because of Covid-19 (other personal criteria also apply)
- **In-person interpreters** may be eligible if their place(s) of work are closed (but not OPI/VRI/RSI interpreters because they can work from home)
- Translators unlikely to be eligible (because they can work from home)
- PUA pays standard state unemployment benefits plus federal top-up

Paycheck Protection Program (1)

- Available for small businesses, sole proprietorships, independent contractors, or other self-employed persons, including freelance translators and interpreters
- Main eligibility condition: Applicant’s business must have been affected by the Covid-19 pandemic
- Secondary condition: The business must have been operational before 2/15/20
Paycheck Protection Program (2)
- Secondary condition: The applicant must be a U.S. citizen or permanent resident
- Small business: < 500 employees (per location)
- Compare EU small business: 10–49 employees, revenue or total assets max. €10 million; micro-enterprise: <10 employees, revenue or total assets max. €2 million
- Round 1: $349 billion; Round 2: $320 billion
- Application window closes June 30, 2020

Paycheck Protection Program (3)
- Applicants must apply for a loan equal to 10 weeks’ average payroll (i.e., no more, no less!)
- PPP loans can only be used to cover payroll expenses, lease/rental payments or mortgage interest payments, and/or utilities
- For most freelancers, “average payroll” = net profit before from freelance business
- The calculation is straightforward: 2019 Line 31 profit / 52 (weeks) x 10 (weeks)
- Capped at max Line 31 profit of $100,000
Paycheck Protection Program (4)

- **Original rule:** If at least 75% of loan amount is used for payroll, the loan can become “forgivable”

- **First round funding opened on 4/3/2020 and was exhausted by no later than 4/17/2020**

- **High-profile cases of larger companies receiving millions, but hundreds of thousands of genuine small businesses got nothing**

- **Round 2 funding started on 4/27/2020**
Large, Troubled Companies Got Bailout Money in Small-Business Loan Program

Companies with accounting problems or in trouble with the government received millions in federal loans.


A company in Georgia paid $6.5 million to resolve a Justice Department investigation — and, two weeks later, received a $10 million federally backed loan to help it survive the coronavirus crisis.

Another company, AutoWeb, disclosed last week that it had paid its chief executive $1.7 million in 2018 — a week after it received $1.4 million from the same loan program.

And Intellectis, a software company in Ohio, got $580,000 from the government program — and then agreed, the following week, to spend at least $200,000 to purchase a rival firm.

The vast economic rescue package that President Trump signed into law last month included $349 billion in low-interest loans for small businesses. The so-called Paycheck Protection Program was supposed to help prevent small companies — generally those with fewer than 500 employees in the United States — from collapsing as the economy halts into what looks like a severe recession.

The loan program was meant for companies that could no longer finance themselves through traditional means, like raising money in the markets or borrowing from banks under existing credit lines. The law required that the federal money — which comes at a low 1 percent interest rate and in some cases doesn’t need to be paid back — be spent on things like payroll or rent.

But the program has been riddled with problems. Weeks after its start, its money ran out, prompting Congress to approve an additional $320 billion in funding that will open for applications on Monday. Countless small businesses were shut out, even as a number of large companies received millions of dollars in aid.

Some, including restaurant chains like Ruth’s Chris and Shake Shack, agreed to return their loans after a public outcry. But dozens of large but troubled public companies with financial or legal problems have also received large payouts under the program, according to an analysis of the more than 200 publicly traded companies that have disclosed receiving a total of more than $750 million in bailout loans.

The New York Times identified roughly a dozen publicly traded companies that had recently boasted about their access to ample capital — and then applied for and received millions of dollars in federal loans.

Legacy Housing, a Texas company that manufactures modular homes, announced on April 7 that it had access to a new $23 million credit line. Curtis B. Hodgson, Legacy’s executive chairman, told investors that he expected any damage from the coronavirus to be short-lived. “Our order book is still strong, and we are well-positioned once the situation begins to normalize,” he said.

Less than a week later, on April 13, the company announced that a local lender, Peoples Bank, had approved it for $6.5 million under the S.P.R.A. loan program.

In an interview on Sunday, Mr. Hodgson said that an inquiry from The Times led the company to decide to give back the money it borrowed, though he defended seeking the loan in the first place. “It’s a highly leveraged company without cash on hand,” he said. “Here was a way to get a cash infusion.”

Excelsior Sports, which makes things like table soccer tables and basketball hoops, already had a $10 million credit line from JPMorgan Chase. The company’s chief executive, Dave Peifer, told investors this month that the company, based in Brownsville, Ind., had “a strong balance sheet” and was seeing rising demand for its products, with so many Americans cooped up at home.

Days earlier, Excelsior got a $1.8 million federally backed loan. A spokesman for Excelsior said the company “fully met all required conditions at the time we applied for the P.P.P. loan.”

Executives at some companies said applying for the loans made clear business sense. The loans are essentially free money: They have rock-bottom interest rates and can be forgiven, if, among other things, the borrower maintains the size of its work force. In some cases, executives said, their bankers encouraged them to apply for the loans.

A number of relatively large companies with connections to Mr. Trump also received millions of dollars in loans.

Phunware, a data-collection company that received a $2.9 million loan this month, counts Mr. Trump’s re-election campaign and Fox News among its biggest clients.

Continental Materials, a heating and air conditioning and construction material supplier based in Chicago, got a $3.5 million loan. The firm’s chief executive, James Gelbritz, is a major Trump donor, and his brother Ronald was appointed ambassador to Brunei by Mr. Trump after serving as Illinois campaign finance chairman for the 2016 Trump campaign.

It isn’t clear whether political considerations helped Phunware and Continental Materials get their loans approved. Neither company responded to requests for comment.

Article excerpts © New York Times
Certification by the Applicant:

“Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

ATA President Ted Wozniak 6/8/2020 (1)

“Many colleagues have mentioned that they have more sporadic ups and downs in work than usual because of the current situation.”

“... as expected, a massive decline in on-site interpreting, while remote interpreting demand increased ... although some translators initially reported large declines, others reported no change or even an increase in demand.”
“Among the segments that have seen much higher demand ... are medical, pharmaceutical, and other areas of life sciences translation, Covid-related corporate communication, as well as education or e-learning, e-commerce, game localization, human rights, and news; but other segments, such as financial and legal, have seen a decrease in demand, in particular for non-essential translation.”

“One of the top concerns for many members is that many of their professional development and continuing education opportunities have been canceled this year.”

“At this time, we are planning a hybrid conference: an in-person event with reduced attendance and social distancing and other health measures in place, with a remote component for those who choose not to attend for whatever reason.”

Source: https://slator.com/industry-news/language-industry-assesses-damage-as-lockdowns-ease/
ITI Spring Pulse Survey 2020 (1)

“The COVID-19 pandemic has resulted in 67% of ITI members experiencing a reduction in work and 15% facing pressure from clients to reduce rates.”

ITI Spring Pulse Survey 2020 (2)

“These were two of the main findings from ITI’s latest Pulse Survey – the Institute’s twice-yearly snapshot of what its members are experiencing in the marketplace – which this time was carried out shortly after lockdown began in the UK.”

“16% of respondents said there had been no impact on their work, while 9% had seen more work coming through.”
ITI Spring Pulse Survey 2020 (3)
“15% said they had experienced problems working as a result of children being at home all day.”

“The challenges facing interpreters were more pronounced, with 82% dealing with less work and 25% facing pressure from clients to reduce rates. However, 16% had seen an increase in online interpreting assignments.”

FIT Europe Take 1 Survey (1)
1,036 independent language professionals from 29 European countries and 18 other countries responded.
A short survey with 5 core questions and a couple of follow-up questions
FIT Europe Take 1 Survey (2)

“The main survey showed that many independent language professionals in 2020 were already in a financially precarious situation, with many unable to earn enough from freelancing and having to top up their income from other sources, and many unable afford private insurance if things go wrong (like illness, or inability to work) and also unable to plan for their future retirement, mainly because of unstable earnings from translation/interpreting.”

FIT Europe Take 1 Survey (3)

Business of independent professionals affected by Covid
FIT Europe Take 1 Survey (4)

Survival without additional support

Not sure 0 to 3 months 3 to 6 months 6 to 9 months 9+ months Other forms of support

FIT Europe Take 2 Survey (1)


“... the Take 2 survey reveals a drop in the number reporting their business is off a cliff (down 11.3 percentage points) and a growth in the number reporting that business is slow (up 8.2 percentage points).”
FIT Europe Take 2 Survey (2)

“... there appears to be acceptance of the fact that clients will need a bit of time to adjust to the new situation but that things will get back to “normal” or a “new normal” in the near future.”


FIT Europe Take 2 Survey (3)

Change between 1st and 2nd COVID survey

<table>
<thead>
<tr>
<th></th>
<th>1st survey</th>
<th>2nd survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business is slow</td>
<td>38.6</td>
<td>46.8</td>
</tr>
<tr>
<td>Business has fallen off a cliff</td>
<td>57.9</td>
<td>46.6</td>
</tr>
<tr>
<td>Business is normal</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>Business is better</td>
<td>7</td>
<td>14</td>
</tr>
<tr>
<td>Business is booming</td>
<td>3</td>
<td>10</td>
</tr>
</tbody>
</table>

Chart: FIT Europe • Source: FIT Europe COVID surveys • Created with Datawrapper
What Savings Should Freelancers Have? (1)

“The number of freelancers able to weather an entire year without income can probably be counted on the fingers of one hand, and it certainly doesn’t include myself. I would say that two to three months is a good average, which means that plenty of colleagues have one to two months at most. Considering the downward spiral in prices that many freelancers have been facing in recent years, that’s neither surprising nor deserving of any ... criticism.”

What Savings Should Freelancers Have? (2)

“...I simply don’t understand why freelancers should be expected to have many months—or even a year’s—savings to tide them over, but it’s OK for larger companies, including incredibly wealthy companies who have spent billions in recent years buying back shares, to go cap in hand to the government.”
What Savings Should Freelancers Have? (3)

“I also want to ... encourage all ATA members ... to submit their applications as quickly as possible. Nobody ... should feel in the slightest bit ashamed or guilty about accepting financial support from federal or state authorities at a time like this. No freelancer should feel (or be made to feel!) that, just because they haven't set aside a rainy day fund equivalent to six months' earnings, they are in some way inferior or inadequate, that they have somehow failed as a freelancer.”

Source: Robin Bonthrone on ATA Business Practices Listserv, 04/29/20

Certification by the Applicant:

“The funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; I understand that if the funds are used for unauthorized purposes, the federal government may pursue criminal fraud charges.”
Good Faith Certification—The Good News

SBA issued updated PPP FAQs on 5/27/2020

46. Question: How will SBA review borrowers’ required good-faith certification concerning the necessity of their loan request?

SBA ... has determined that the following safe harbor will apply to SBA’s review of PPP loans with respect to this issue: Any borrower that ... received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

Applying for PPP Loans (1)

• You can’t apply directly to the SBA

• All applications have to be made through an SBA-approved bank or other financial institution

• Freelancers and most LLC owners must provide documentary evidence of average net profit before tax from self-employment

• For self-employed and “plain vanilla” LLCs, this refers typically to the 2019 federal income tax return, Schedule C, line 31
Applying for PPP Loans (2)

There have been reports of applications by freelancers or LLC owners being rejected if 2019 income tax return documents have not been filed.

Lenders may also want to see “internal” accounting documents, e.g., cash-basis income statement, in some cases with a CPA certification. Note: This is not an SBA requirement! It may merely be the lender applying its own standard due diligence policies.

Illustrative PPP Loan Application (1)

<table>
<thead>
<tr>
<th>Name:</th>
<th>Industry Code:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Organization:</td>
<td>541990 - Translation and Interpretation Services</td>
</tr>
<tr>
<td>Business Phone Number:</td>
<td></td>
</tr>
<tr>
<td>Address 1:</td>
<td></td>
</tr>
<tr>
<td>City:</td>
<td></td>
</tr>
<tr>
<td>Zip Code:</td>
<td></td>
</tr>
<tr>
<td>State of Formation:</td>
<td>2018</td>
</tr>
<tr>
<td>Date Business Established:</td>
<td></td>
</tr>
<tr>
<td>Date Current Ownership Established:</td>
<td>2018</td>
</tr>
<tr>
<td>Were you economically affected by COVID-19?: Yes</td>
<td></td>
</tr>
<tr>
<td>Is the applicant business an eligible entity type?: Yes</td>
<td></td>
</tr>
</tbody>
</table>

Questions

Were you operational before February 15th?:

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### Illustrative PPP Loan Application (2)

Is this business considered a small business based off the SBA Size Standard Guidelines?: Yes

Is the Business or any owner presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?: No

Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?: No

Does the business operate under a Franchise-License/Distributor/Membership/Dealer/Jobbier or other type of Agreement?: No

Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?: No

Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?: No

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### Illustrative PPP Loan Application (3)

#### Maximum Loan Amount

<table>
<thead>
<tr>
<th>Average Monthly Payroll Costs</th>
<th>Average Monthly Exclusions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary, Wage, Commission, or Similar Compensation: $0.00</td>
<td>Compensation of an individual employee in excess of an annual salary of $100,000: $0.00</td>
</tr>
<tr>
<td>Payment of cash tip or equivalent: $0.00</td>
<td>Taxes imposed or withheld under Chapters 21, 22, or 24 of the Internal Revenue Code of 1989: $0.00</td>
</tr>
<tr>
<td>Payment for Vacation, Parental, Family, Medical, or Sick Leave: $0.00</td>
<td>Any compensation of an employee whose principal place of residence is outside of the United States: $0.00</td>
</tr>
<tr>
<td>Allowance for Dismissal or Separation: $0.00</td>
<td>Qualified Sick Leave Wages: $0.00</td>
</tr>
<tr>
<td>Payment required for the provisions of Group Health Care Benefits, including Insurance Premiums: $0.00</td>
<td>Qualified Family Leave Wages: $0.00</td>
</tr>
<tr>
<td>Payment of any Retirement Benefit: $0.00</td>
<td></td>
</tr>
<tr>
<td>Payment of State or local tax assessed on the compensation of employees: $0.00</td>
<td></td>
</tr>
</tbody>
</table>

No Reduction

Taxes imposed or withheld under Chapters 21, 22, or 24 of the Internal Revenue Code of 1989: $0.00

Average Monthly Payroll: $0.00

Average Monthly Exclusions: $0.00

Outstanding EIDL, Not of Advance (If Applicable): $0.00

Maximum Loan Amount (estimates): $0.00
Applying for PPP Loans (3)

- You should normally submit the application through the bank where you maintain your business account.
- If that doesn’t work, try a small local or regional bank, online bank, or fintech (including Intuit, Square, OnDeck, Kabbage).
- Round 2 of PPP earmarks $60 billion specifically for small lenders, including community banks.
Applying for PPP Loans (4)

Although best practice is for freelancers to have a separate business checking account, some T&Is report that lenders have approved applications even if T&Is use their personal account for their business.

Lenders who don’t already have a banking relationship with the applicant must collect personal information about borrowers for anti-money laundering (AML) compliance purposes (KYC/“Know Your Customer”) principle, including, e.g., their SSN.

Applying for PPP Loans (5)

Remember that the bank/fintech doesn’t itself approve the loan.

Providing standardized information is more likely to result in SBA approval.

S-Corps must submit Form 940 for 2019 and Form 941 for Q1 2020. The PPP loan amount is based on average payroll, not on business profit distributions to the owner(s) (i.e., no Schedule C basis).

Loan is granted by means of a promissory note.
PPP Loans and Unemployment Benefit (1)

Question: Can you apply for both PPP and unemployment benefit?

Based on the purpose and wording of the relevant legislation, it does appear that PPP and unemployment benefit(s) are mutually exclusive.

PPP is only available to employers (even if the applicant is the only employee, e.g., an S-Corp) to keep paying employee payroll, and to self-employed persons for payroll-equivalent payments.

PPP Loans and Unemployment Benefit (2)

However, unemployment benefit is only available to employees who have been made redundant or furloughed.

Basic principle: You can’t be an employee who is still being paid (because of the PPP loan received by your employer) and be an unemployed/furloughed employee at the same time!
Accounting for PPP Loans (1)

- For self-employed persons and LLCs using cash basis accounting, accounting for PPP loans is likely to be relatively straightforward.
- For example, you can document payment of the “payroll” through a transfer or direct deposit of the relevant amount to your personal bank account with a memo like “Payroll,” “Payroll costs,” “Payroll for [month],” or “Personal withdrawal,” as appropriate.
- If accounting software splits costs into salary and payroll taxes, make a manual transfer.

Accounting for PPP Loans (2)

- Rödl & Partner USA has published some useful guidelines on how to account for PPP loans: https://www.roedl.us/trending/tax_matters/ppp-loan-practices-to-consider.
- Applies mostly to companies with more than one employee, but:
  - Pay any pro-rated monthly income in excess of $8,333 into a separate bank account because it is disregarded for PPP purposes.
  - You can only claim mortgage interest (not principal) payments for PPP funding.
PPP—Tax Issues (1)
- Section 1106(i) of the CARES Act excludes forgiven loan amounts from gross income
- IRS issued Notice 2020-32 on 04/30/2020 addressing the deductibility of PPP loans
- Expenses paid using PPP loans cannot be deducted for tax purposes if the amounts are forgiven, because the forgiven loan amounts are tax-exempt. So the tax consequences are the same as if the PPP loans were included in gross income and taxed

PPP—Tax Issues (2)
- The inability to deduct the expenses covered by the PPP loan may reduce the tax benefit for recipients of PPP loans
- But: The (tax-free) cash flow today will surely outweigh any future reduced tax benefit!
- “Small Business Expense Protection Act” sponsored by Senator John Cornyn (R-TX) clarifies that business expenses paid with forgiven PPP loans are tax-deductible
- So the tax position regarding the deductibility of expenses covered by PPP loans may change
PPP—Tax Issues (3)

Because the potential tax consequences of the IRS Notice may be too complex in individual cases for persons who do not have the relevant professional training, translators and interpreters who have received a PPP loan are strongly advised to discuss those consequences with a professional advisor. The same advice may apply if you rely on standard commercial tax software to prepare your tax returns.

PPP Loan Forgiveness—Original Rules (1)

- At least 75% of loan amount to be spent on payroll to qualify for forgiveness
- Maximum 25% of loan amount to be spent on other operating costs (rent/mortgage, utilities)
- First payment of any non-forgivable amounts not due for six months after disbursement
- But: Because the loan amount is equivalent to ten weeks’ payroll, at least 20% (but no more than 25%) of the loan amount had to be spent on non-payroll costs to be forgivable
- Amount not spent = interest-bearing (1%) loan
PPP Loan Forgiveness—Original Rules (2)

- SBA issued first version of Loan Forgiveness Application on 5/15/2020
- 11 pages long, 5 sections: definitions and instructions; PPP loan forgiveness calculation form; borrower’s certification; calculation worksheet; optional borrower demographic information form
- Different methods for calculating “covered period” (not relevant for freelancers)
- Substantial documentation requirement (account statements, tax forms, receipts …)

PPP Loan Forgiveness—Original Rules (3)
Sample forgiveness calculation (original rules)

Loan amount: $10,000 (10 weeks @ $1k)
Maximum payroll: $8,000 (8 weeks @ $1k)
Rent/utilities: $1,000
Non-forgivable: $1,000
OR
Rent/utilities: $0
Non-forgivable: $2,000
PPP Loan Forgiveness—Original Rules (4)

- Reaction of lenders and borrowers to the first version of the SBA’s Loan Forgiveness Application less than enthusiastic
- Considerable criticism from lenders (“2 page loan application, followed by an 11 page forgiveness application???”)
- House bill followed by compromise Senate bill passed on 6/3/2020
- “Paycheck Protection Program Flexibility Act” amends key provisions of the PPP program

PPP Loan Forgiveness—New Rules (1)

- Treasury Secretary Mnuchin and SBA Administrator Carranza issued a statement on 6/8/2020 in response to the PPP Flexibility Act
- SBA will “promptly” issue rules and guidance, a modified borrower application form, and a modified loan forgiveness application form to implement the PPP Flexibility Act
- SBA has still not issued the Final Interim Financial Rule, but “Interim Final Rule on Revisions to the Interim Final Rule”(!) contains amendments and clarifies outstanding items
PPP Loan Forgiveness—New Rules (2)

- Extension of the loan maturity from two to five years for loans made on or after 6/5/2020
- Extension of the deferral period for principal and interest payments until the date on which SBA remits the loan forgiveness amount on a loan to the lender (or notifies the lender that no loan forgiveness is allowed), if the borrower applies for forgiveness within ten months after the end the loan forgiveness covered period

PPP Loan Forgiveness—New Rules (3)

- Implementation of the reduction of expenses required to be spent on payroll from 75% to 60% and interpretation that borrowers who fail to hit the 60% threshold remain eligible for partial forgiveness
- Provides borrowers receiving loans before June 5, 2020 the flexibility to elect whether to use the 8-week or 24-week covered period for loan forgiveness.
PPP Loan Forgiveness—New Rules (4)

- Adds “refinancing an SBA EIDL loan made between January 31 and April 3” to the list of allowable expenses for PPP loan proceeds and clarifies that, “If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to $10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.”

PPP Loan Forgiveness—New Rules (5)

- SBA issued “Additional Revisions to First Interim Final Rule” on 6/12/20
- The original PPP rules did not allow loans to be granted if an owner of 20% or more of the applicant’s equity had been convicted of a felony with the last five years
- The new rule defines a shorter one-year period for felonies that do not involve fraud, bribery, embezzlement, or a false statement in a loan application
- New lender/borrower application forms
PPP Forgiveness Rules—Key Takeaways

- The SBA still hasn’t published the revised Forgiveness Application
- The Forgiveness process will probably use the same online software as the PPP application
- Translators and interpreters are being advised to make the 24-week covered period election so they can apply up to 10 weeks’ payroll (i.e., the entire loan principal) to the forgiveness eligibility requirement
- Likely outcome: The pressure is off and we could benefit from up to 100% loan forgiveness

Other Programs (1)

- SBA Economic Injury Disaster Loan (EIDL) program: Original maximum loan amount was reduced from $2 million to $150,000
- SBA EIDL Advance program: a maximum forgivable grant of $10,000. Designed to provide economic relief to businesses experiencing a temporary loss of revenue
- Can be combined with PPP if EIDL Advance is not used for payroll expenses
- EIDL/PPP comparison: See https://bench.co/blog/operations/eidl-vs-ppp/
Other Programs (2)
- Regional/state loan programs also available, e.g., New York Forward Loan Fund (NYFLF)
- NYFLF targets small businesses with < 20 FTE
- NYFLF provides working capital loans, repayable with interest over 5 years, to help small businesses reopen
- Not available for businesses that received PPP or EIDL loans
- For NYFLF details, see: https://esd.ny.gov/nyforwardloans-info

Useful Links
- https://home.treasury.gov/policy-issues/cares