BLB&B Advisors, LLC
FINANCIAL GUIDANCE SINCE 1964℠

# BLBB Entrepreneurial Financial Management

## Managing SBA's Paycheck Protection Program – Additional SBA Guidance; IRS Issues Rules on Deductibility of Debt Forgiveness Expenses

On 4/24/20, an additional $310 billion in funding was added on top of the original $350 billion for the CARES Act Paycheck Protection Program.  The Small Business Administration (SBA) resumed applications on 4/27 and as of 5/1 the SBA appears to be still accepting funding requests.

### Additional SBA Guidance:

The U.S. Treasury, through the SBA, has issued new guidance in a number of areas during the last 8 days. In most cases, requirements have tightened, likely in part from some concerns expressed publicly on who received the loans and  who did not.  These new changes are of significance because under Section 1109(d), the CARES Act provides the Treasury Secretary fairly wide guidance to adjust the program terms, so lenders, applicants and recipients should be mindful[1].  The updated guidance through the updated Frequently Asked Questions (FAQs) is located  here.

Some changes of note:

- #31 – appears to effectively say that the intent of Congress was to make it unlikely that a public company, with substantial market value and access to capital markets, would be eligible since they had liquidity or access to liquidity, and that they can return the funds by 5/7/20 without threat of penalty (published 4/23/20)
- New interim guidance was issued 4/24/20 also stating that private equity funds and hedge funds are not eligible for PPP loans because such funds are engaged in investment or speculation[2]
- #34 – appears to confirm agricultural producers, farmers, and ranchers are eligible

[1] See section 1109(d) of the CARES Act and Lewis Horowitz & Eric Kodesh, "PPP Certification – Uncertainty About the Meaning of 'Uncertainty'", JD Supra 4/22/20
[2] National Law Review, New Guidance on PPP Loan Eligibility: Hedge Funds, PE Funds, and Businesses with Access to Liquidity, 4/26/20 and Reuters "Hedge funds and private equity firms won't get PPP loans – SBA" 4/24/20




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- #36 – appears to clarify that the 500-employee threshold counts part-time employees as one full employee (i.e. measuring number of people and not Equivalent Personnel) (published 4/26/20)
- #37 – appears to disqualify businesses owned by private companies with adequate sources of liquidity to support the business's ongoing operations (published 4/28/20)

Since the criteria and goal posts seem to be changing, borrowers may wish to seek legal advice with questions. The return of the funds by 5/7 for those impacted by this additional guidance, is a milestone to note and is approaching quickly. With respect to a process for evaluating the changing liquidity requirements, we came upon a possible framework presented by Lane Powell and published in JDSupra, "PPP Certification and the Uncertainty Principle – FAQ 31 Retroactively Reduces Uncertainty About 'Uncertainty' and the Need for PPP" dated 4/23/20 here and their update after the SBA issued FAQ 37 on 4/28/20 applying FAQ 31 to private companies as well located here , "The 'Laker Effect' Continues: Ongoing Uncertainty With PPP Borrowers' Uncertainty Certification".

**IRS Issues Rules on Deductibility of Debt Forgiveness Expenses:**

The Internal Revenue Service issued 4/30/20 guidance which basically states that to the extent a borrower has loan forgiveness, the expenses for the amount of the loan forgiveness would not be deductible, even if the expenses would have otherwise been allowable. Recall that the CARES Act stipulated that the loan forgiveness amount would not be considered taxable income. The Treasury/IRS concluded this on the basis of existing IRS Section 265(a), basically making expenses which would have otherwise been deductible, not deductible if they were for the production of tax-exempt income. See IRS Notice 2020-32 here.

If you have any questions about the items listed here or would like to discuss this further, please do not hesitate to contact Doug Huntley, MBA, CPA (inactive) at 215-643-9100 or dhuntley@blbb.com.

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