



BLBB Entrepreneurial Financial Management

Paycheck Protection Program Update

This briefing includes a summary of:

- SBA PPP Interim Final Rule (IFR), August 24, 2020 Summary
- PPP strategy thoughts
- Tax planning opportunities:
 - Family Businesses and impact of possible Gift and Estate Tax law changes
 - Updated FAR rates

SBA PPP Rules Update:

The SBA provided additional guidance through an IFR on the *Treatment of Owners and Forgiveness of Certain Nonpayroll Costs* issued on August 24, 2020 and published in the Federal Register at Vol. 85, No. 167, page 52881:

- **Owner-Employee Compensation** – Employees with less than a 5% ownership stake in a C, or Subchapter S Corporation, are not subject to the limitations on compensation for owners. *There was nothing in the IFR which indicated whether this would also apply to LLC owners holding less than 5% of the ownership.*
- **Tenant Disallowance** – Amounts attributable to the business operation of a tenant, or sub-tenant, of the PPP Borrower are not eligible for loan forgiveness. For example, if an eligible business sub-lets out 25% of its space to a 3rd party, only 75% of the PPP Borrower’s lease payments, or interest on the mortgage, would be eligible for PPP Forgiveness.
- **Related Party Rent Limitations** – Previously, the rules for related party rent were that it had to be at “market” rates and under a lease agreement effective as of 2/15/20. The SBA has now added the additional requirement that the eligible PPP Loan Forgiveness amount of any related party leases may NOT be higher than the interest expense which the related party owner paid. This means that the eligible amount for loan forgiveness is the lower of (1) the market lease rate under the lease in place at 2/15/20, OR (2) the interest which the entity holding the asset paid on the debt associated with that asset. In addition, they are now disallowing any interest payments to a related party.

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www.BLBB.com
215.643.9100

Mailing address
P.O. Box 1010, Montgomeryville, PA 18936

Street address
103 Montgomery Avenue, Montgomeryville, PA 18936

- **Home Office Limitation** – If a PPP Borrower works out of his or her home, when determining the amount of non-payroll costs that are eligible for forgiveness, the PPP Borrower may include only the share of the covered expenses that were deductible on the PPP Borrower’s 2019 tax filings, or if a new business, the PPP Borrower’s expected 2020 tax filings.

PPP strategy thoughts:

- As previously mentioned, the PPP program is still in flux and the rules for PPP Borrowers for eligible loan forgiveness expenses, and rules for PPP Lenders, are still changing. This is a new program, and likely the first loan forgiveness applications will be closely reviewed by the PPP Lender and that PPP Lender might give conflicting instructions until they develop Standard Operating Procedures and train their staff for consistent application.
- Given that the PPP Borrower can 1) elect the 24 week period, which is likely because that will allow a greater magnitude of Eligible Forgiveness Expenses to accumulate, 2) the PPP Borrower has 10 months after the end of the Eligible Loan Forgiveness period to file with their PPP Lender, and 3) that interest is forgiven on the amount of the loan forgiveness amount, it would seem advisable to delay submitting the PPP Loan Application until the SBA Loan Forgiveness rules are more clearly defined, potentially 1Q2021.

Tax planning:

- Family business owners should be aware that if a “blue wave” happens in November, the Gift and Estate tax exemption might be reduced from \$11.58 million to \$3.4 million, and the marginal Gift and Estate tax rate increased from 40% to “back to the historical norm”, with potential significant reductions to the value to beneficiaries.¹ In consideration of a potential blue wave, you may choose to consider, in consultation with your attorney, gifting family business equity (and other assets such as financial investment assets) into an appropriately constructed Trust by December 31, 2020. If this happens, likely Trust and Estate attorneys will be extremely busy from November 4th to end of the year, so you may want to contact your attorney now and have a preliminary discussion.
- The September IRS Federal Applicable Rate (FAR) rates are: Short Term (<3 years) 0.14%; Mid-term (3 – 9 years) 0.35%; and Long-term (>9 years) 1.00%

Additional material:

- Prior BBLB SBA PPP Featured articles landing page: <https://blbb.com/entrepreneurial-management/>
- SBA General SBA PPP landing page: <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

The program requirements are continuing to change, and the Borrower should periodically check to see whether there is new guidance before submitting their PPP Loan Forgiveness Application to their Lender.

BLBB does not provide tax advice nor practice law. Please see your licensed tax or legal professional who can advise you based on your particular facts and circumstances.

¹ “What’s Ahead for your Taxes if Biden wins the Election” 8/17/20, CNBC, Darla Mercado and “Biden-Sanders Unity Task Force Recommendations: Combating the Climate Crisis and Pursuing Environmental Justice” p. 15 of 110. *Historically the Federal Gift and Estate Tax has been as high as 77% (1941 to 1976) and in 2000 was 55%, IRS The Estate Tax: Ninety Years and Counting” by Dairen B. Jacobson, Brian G. Raub, and Barry W. Johnson.*