

SBA Stimulus Loans: What Mortgage Lenders Should Know

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Presented by

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Presenter

Fran Mordi

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Fran Mordi joined the Mortgage Bankers Association in May of 2017 after 20 years of post-Law school experience in the areas of tax and accounting. As VP in the Tax, Accounting & Mortgage Markets group at the American Bankers Association for ten years, Fran worked with financial services entities on tax and accounting issues, specifically as subject matter expert and member engagement lead on policy and compliance. Fran worked on domestic and international issues impacting the industry, put together training sessions for members, managed several banker committees, and was a frequent speaker at various bank tax conferences and meetings. Fran has extensive experience working with the banking regulators, FASB, the Treasury and Congress as an advocate of the financial services industry. Before joining the MBA, Fran spent a few years at Deloitte Tax where she expanded her knowledge and experience in Tax Accounting as well as client relationship and management. Fran holds a J.D. from New England Law School, Boston, MA, and an LL.M in Taxation from Georgetown Law School, Washington, DC.

Presenters

Ken Richey

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Ken founded Richey May & Co. in 1985 and he currently serves as the leader of the firm's mergers & acquisitions services for the mortgage banking industry. He recently transitioned from the role of Managing Partner, where his primary responsibilities included leading firm growth and supporting the firm's partners in their leadership, management, and technical problem-solving efforts.

David Rice

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David has over 25 years experience in the areas of loan accounting, system implementation and merger integrations work. David has served as the integrations manager for multiple bank acquisitions and as the implementation manager for loan origination and loan servicing system installations. He has worked on multiple engagements related to the interfacing of asset and liability systems to the general ledger as well as implementing changes to GAAP within the systems.

Agenda

- The CARES Act and the PPP Program
- PPP Program basics
- PPP Eligibility with example
- Key considerations
- Maximum Loan Amount calculation
- Loan Forgiveness provisions
- Q&A

The CARES Act and the Paycheck Protection Program (PPP)

As part of the March 27, 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act The United States Small Business Association (SBA) is offering low-interest disaster loans to decrease the economic impact of the COVID-19 pandemic on small businesses under the Paycheck Protection Program (PPP). \$349 Billion has been set aside to fund this program.

- **The SBA issued interim final guidance on April 2, 2020 and can be found at <https://content.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL.pdf>**
- **The intent of the program is to provide funding primarily for payroll purposes but there are a range of allowable usages. Including :**
 - Mortgage interest payments
 - Lease/rental payments
 - Debt service payments on pre-existing debt
 - Other bills including insurance and utilities
- **The Covered Period for this program is February 15, 2020 thru June 30, 2020.**
- **The standard requirements for both personal guarantees and pledging of collateral have been waived for the PPP.** The personal resource test for owners with a 20% stake is also eliminated from this program.

PPP Loan Structure

- Under the Act the maximum loan maturity is set at 10 years. SBA guidance published on April 2, 2020 has set the maturity rate on PPP loans at 2 years from the date the borrower applies for loan forgiveness.
- Maximum interest rate is set at 4%. SBA guidance published has set the interest rate at 1%.
- Prepayment penalties, guaranty fees and annual fees associated with standard 7(a) program have been waived

Loan Repayment – Under the Act lenders are required to provide complete payment deferment relief for impacted borrowers with covered loans for a period of not less than 6 months, including payment of principal, interest, and fees, and not more than 1 year. SBA Guidance has clarified this as a maximum of 6 months for deferment and that interest will accrue during this period.

Who is eligible for PPP?

Eligibility during the covered period has expanded to virtually all small businesses with under 500 employees including sole proprietorships, independent contractors. For business's with over 500 employees there are exceptions based on North American Industry Classification System (NAIC) codification for an individual business.

For IMBs the classification code is 522292 which places a cap on gross revenue of \$41.5 million for companies with over 500 employees.

| | |
|--------------------------------|---|
| <i>Average</i> Total Employees | Average number of all employees, both part-time and full time, over the preceding 12 months. |
| <i>Average</i> Gross Revenue | Average gross revenue over prior 3 years. |

Eligibility Example

Chart below is specific to NAIC Code 522292 – Real Estate Credit

Maximum eligible gross revenue = \$41.5 million

| | | | |
|--|-----------------|-----------------|---------------------|
| Average Number of Employees (Prior 12 mo.) | 450 | 510 | 510 |
| Average Gross Revenue (Prior 3 years) | N/A | \$40 million | \$42 million |
| | Eligible | Eligible | Not Eligible |

Additional Considerations: Are you an affiliate?

Affiliates and PPP Eligibility

If you determine you are part of an affiliate structure all of the employees and revenues across all affiliates are included into the eligibility calculations.

- Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. **It does not matter whether control is exercised, so long as the power to control exists.**
- SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.
- Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.
- Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.
- In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.
- *In determining the concern's size, SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.*

Maximum Loan Amount

What's my maximum loan amount?

The maximum loan amount for any business is determined as **average monthly payroll times 2.5 up to a total of \$10 million**. *There are some nuances to the calculation that must be considered:*

The monthly payroll amount is also an average based on the preceding 12 month period.

Payroll for purposes of this calculation includes –

- Salaries, wages, commissions, and tips
- Payments for vacation, medical, paternal, maternal, or sick leave
- Allowances for separation or dismissal
- Payments for group health coverage including insurance premiums
- Payment of any retirement benefit
- Payment of local or state tax assessed on the compensation

Payroll DOES NOT include –

- Compensation of employees at an **annualized rate of over \$100,000**
- Federal withholding taxes
- Compensation for any employee whose **primary residence is outside of the United States**
- **Qualified sick leave** for which credit is allowed under Families First Coronavirus Response Act
- **Qualified family leave** for which credit is allowed under Families First Corona Virus Response Act
- **Clarified under SBA guidance – payments to sub-contractors are NOT included as they are eligible to apply for PPP loan of their own.**

Maximum Loan Amount Example

For example: Business with Owner and 4 employees

- Owner and Employee 1 are subject to the \$100,000 cap

Maximum Loan amount is $(\$360,000 / 12) * 2.5 = \$75,000$

| Employee | Annual Salary | Commissions | Payroll for Calculation |
|---------------|---------------|-------------|-------------------------|
| Owner | \$200,000 | | \$100,000 |
| Employee 1 | \$150,000 | \$25,000 | \$100,000 |
| Employee 2 | \$60,000 | \$15,000 | \$75,000 |
| Employee 3 | \$50,000 | \$10,000 | \$60,000 |
| Employee 4 | \$25,000 | | \$25,000 |
| Totals | | | \$360,000 |

Loan Forgiveness

PPP Loan Forgiveness

An PPP loan recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made for an 8 week period, selected by the borrower, during the covered period (ends June 30, 2020):

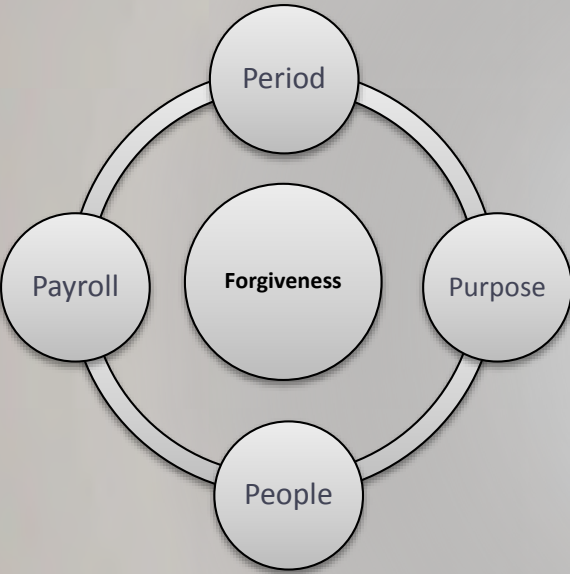
- Payroll Costs
- Mortgage interest paid
- Rent payments
- Utility payments

If the borrower lays off or terminates employees, the forgiveness will be reduced by the percent decrease in the number of employees. *This is based on headcount not payroll dollars and includes employees terminated for cause or voluntary termination by the employee.* Hiring of replacements is allowed to close gaps.

If borrower’s total payroll expenses on workers making less than \$100,000 annually decreases by more than 25 percent, loan forgiveness will be reduced by the same amount. *Note – this is determined on salary and wages, there is no reference to commissions for this part of the calculation.*

If a borrower has already laid off employees they may still be eligible to have the loan be forgiven for the full amount of payroll cost if employees are rehired by end of the covered period, June 30, 2020.

4 Points for PPP Forgiveness



- **Period** – Did you utilize the loan proceeds within the prescribed 8 week period?
- **Purpose** – Did you deploy the loan proceeds on permissible items?
- **People** – Did you maintain the same headcount across the covered period?
- **Payroll** – Did you maintain your employees under \$100k in salary at minimum of 75% of their pay?

If you can answer yes to all of these questions you should be eligible for forgiveness of the PPP, which is a non taxable event.

Considerations and Recommendations

PPP Considerations and Recommendations

1. **Employment Tax Deferment vs. PPP Forgiveness** – Careful consideration should be given to participation in the federal payroll tax deferment program in conjunction with the PPP. If a borrower elects to defer the payment of withholding taxes it will prevent the borrower from attaining forgiveness on the PPP debt.
2. **Expectations vs. Realities** – The current funding amount under PPP represents approximately 10X the amount of SBA loans funded in calendar year 2019. These funds are required to be disbursed in an eleven week period. This is going to put tremendous strain on the system and all of the parties involved. SBA has further confirmed that PPP funding is on a “first come, first served” basis.
3. **Race to the Finish** – The popularity of this program is expected to be record breaking and as such has the potential to overwhelm lenders very early on which can be compounded by the lack of authoritative guidance. We strongly recommend that IMBs interested in participation start the process as early as possible and also with a known quantity bank if at all possible. Work with your lender and outside advisor’s to gather the documentation necessary and model scenarios for loan forgiveness.
4. **Evidence of Funds Usage** – Many companies have inquired about how to evidence the usage of the funds was in accordance with the loans intent. One of our recommendations for this is to directly deposit the funds into payroll clearing accounts that will provide clear evidence of usage to make payroll and similar setup for the payment of rent, utilities and mortgage interest.

Questions?

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Thank You!



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