Making the Most of Paycheck Protection Plan ("PPP") Loans

Presented in Partnership with Foundation Software by:
Ivan Golden, Partner, Hahn Loeser
John Paul Lucci, Partner, Hahn Loeser
Rob Remington, Partner, Hahn Loeser
and
Suhas Shah, Partner, Intyllus Advisors

FOUNDATION software

HAHN HL LOESER
100

intyllus

BREAKING NEWS:

Congress Appropriates an additional $310 billion to the Paycheck Protection Program

Congress appropriates an additional $310 billion to the Paycheck Protection Program

- Congress approved an additional $310 billion appropriation to the Paycheck Protection Program fund on April 23, 2020.

- The additional funding should allow the application and approval process to reopen.

- $60 billion of the $310 billion total is set aside for lending through smaller institutions like community banks, credit unions, and community development financial institutions.

- The substantive rules of the PPP loan program have not changed.

How can PPP loan funds be used?

How can PPP loan funds be used?
(continued)

- payroll costs;

- rent payments;

- utility payments;

- interest payments on other debt obligations incurred before February 15, 2020; and

- refinancing an SBA Economic Injury Disaster Loan ("EIDL") made between January 31, 2020 and April 3, 2020.
  - If an EIDL was used for payroll costs, the PPP loan must be used to refinance the EIDL loan, since the SBA does not allow borrowers to take out multiple loans for the same expenses.

- The CARES Act suggested that PPP loan proceeds could be used for other purposes.

- However, an SBA Interim Final Rule and the Borrower Application Form provide that PPP loan funds may be used only for the above purposes.

FOUNDATION software

How can PPP loan funds be used?
(continued)

HAHN LOESER
100

intyllus

The SBA Interim Final Rule also states that at least 75 percent of PPP loan proceeds must be used for payroll costs.

How can PPP loan funds be used?
(continued)

Borrowers are subject to penalties for knowingly misusing PPP loan funds.

The SBA announced on April 23 in an FAQ that certain well-capitalized businesses may not be eligible for loans.

How much of my PPP loan is eligible for forgiveness?

How much of my PPP loan is eligible for forgiveness?

The entire principal amount of a PPP loan and accrued interest is eligible for forgiveness.

The amount forgiven will be excluded from gross income (i.e., borrowers will not have cancelation-of-debt income).

The actual amount of forgiveness depends on how much the borrower spends during the 8-week period beginning on the date of the loan disbursement (the "covered period").

Payments made during the covered period for the following purposes are eligible for forgiveness:

- payroll costs;

- payments of mortgage interest on mortgage obligations incurred before February 15, 2020;

- rent payments under leases entered into before February 15, 2020; and

- utility payments under utility service agreements entered into before February 15, 2020.

How much of my PPP loan is eligible for forgiveness? (continued)

- The list of items that qualify for forgiveness is narrower than the list of permissible uses of PPP loan proceeds.

- For example, PPP loan proceeds may be used to pay rent with respect to a lease entered into after February 15, 2020 or to make interest payments on other debt; however, such uses of PPP loan proceeds are NOT eligible for forgiveness.

- At least 75 percent of the forgiveness amount must consist of eligible payroll costs.

FOUNDATION software

HAHN 100 LOESER

intyllus

Am I eligible for loan forgiveness if I laid off employees or cut salaries?

Am I eligible for loan forgiveness if I laid off employees or cut salaries?

- A borrower's forgiveness amount is reduced by multiplying the forgiveness amount by a fraction:

  - the numerator is the borrower's average number of full-time equivalent ("FTE") employees during the covered period;

  - the denominator is the lesser of

    - the borrower's average number of FTE employees between February 15 and June 30, 2019, or

    - the borrower's average number of FTE employees between January 1 and February 29, 2020 (the "testing period").

  - For example, if a borrower had 90 FTE employees during the covered period and 100 FTE employees during the testing period, the borrower's loan forgiveness amount would be reduced by 10 percent.

*Am I eligible for loan forgiveness if
I laid off employees or cut salaries?*
(continued)

- A borrower's forgiveness amount also is reduced by the amount of any reduction in salary or wages paid to any employee who earned $100,000 or less, on an annualized basis, during each pay period of 2019, to the extent such reduction exceeds 25 percent.

- For example, if a borrower reduces the salary of an employee who earned $100,000 in 2019 by $40,000, the borrower's forgiveness amount would be reduced by $15,000 ($40,000 - $25,000).

- The amount of loan forgiveness due to a reduction in FTE employees or a reduction in payroll is not reduced in the following circumstance:

  - The borrower reduced its average number of FTE employees, or reduced the salaries of employees earning $100,000 or less by more than 25 percent, between February 15 and April 26, 2020, and

  - such reductions are eliminated on or before June 30, 2020.

How do I apply for loan forgiveness?

How do I apply for loan forgiveness?

A borrower seeking forgiveness of a PPP loan must submit an application to the lender that includes:

- documentation verifying the number of FTE employees on payroll and pay rates for the covered period, including

  - payroll tax filings reported to the IRS (i.e., Forms 941); and

  - state income, payroll, and unemployment insurance filings.

- Documentation including canceled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, covered lease obligations, and covered utility payments;

How do I apply for loan forgiveness?
(continued)

- **Certification from an authorized representative of the borrower that:**
  - The documentation presented is true and correct; and
  - The amount for which forgiveness is requested was used to retain employees, make interest payments on covered mortgages, make payment on covered rent obligations, or make covered utility payments; and
- **Any other documentation required by the SBA Administrator or the lender.**

How do I apply for loan forgiveness?
(continued)

- Lenders who receive an application for loan forgiveness must issue a decision within 60 days.

- There is no statutory deadline for borrowers to submit a loan forgiveness application.

- However, borrowers generally should apply as soon as possible to ensure the application is timely approved and that no necessary documentation is missing.

What happens to any loan balance that is not forgiven?

PPP loan proceeds that do not qualify for forgiveness must be repaid over two years at 1.0% interest.

Borrowers are not required to make any payment of principal or interest for six months from the date of the loan disbursement.

Interest will continue to accrue during the six-month deferral period on any loan balance that is not forgiven.

Definition of Compensation
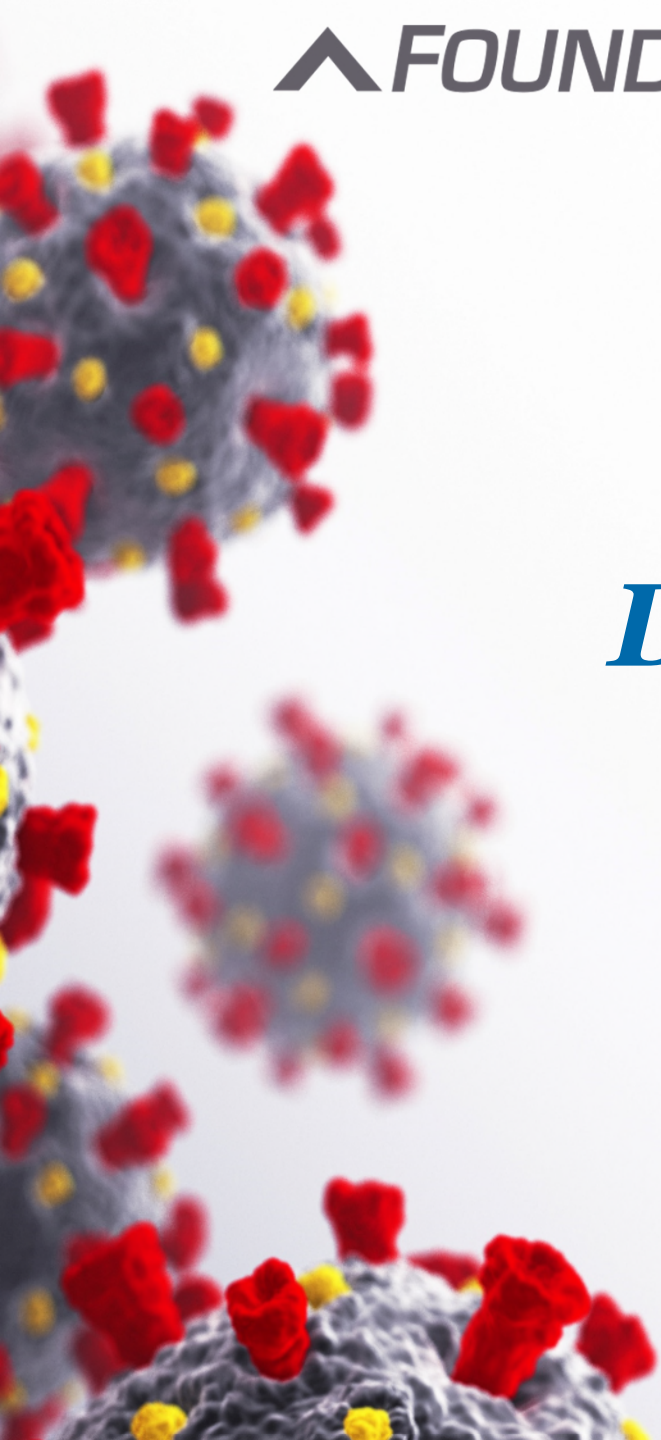
Concept of Incurred and Payments made

Questions?

Rob Remington, Partner
Hahn Loeser & Parks LLP
p 216.274.2208
e rrr@hahnlaw.com

Ivan Golden, Partner
Hahn Loeser & Parks LLP
p 312.637.3070
e igolden@hahnlaw.com

John Paul Lucci, Partner
Hahn Loeser & Parks LLP
p 216.274.2310
e jlucci@hahnlaw.com

Suhas Shah, CPA, CCIFP, CGMA
Intyllus Advisors
p 443.973.6892 x201
e sshah@intyllus.com