



## SBA and Treasury Answers to PPP Loan and EIDL FAQs

*Fuoco Group presents this information to the members of the Palm Beach County Medical Society as a member benefit.*

Some frequently asked questions on federal coronavirus measures were answered in guidance recently issued by the SBA and Treasury, but new questions have arisen as well related to the Paycheck Protection Program (PPP) and to the Economic Injury Disaster Loans (EIDL).

### Answers to PPP FAQs:

- Establish that the payment or non-payment of fees of an agent or other third party is not material to the SBA's guarantee of a PPP loan or to the SBA's payment of fees to lenders.
- Permit payments for vision and dental benefits to be included in the group health care benefits and insurance premiums that are eligible to be paid with PPP funds.

### Answers to FAQs related to the PPP Loan forgiveness and an EIDL:

- Describe how a lender will be able to confirm the amount of any EIDL advance that will be automatically deducted by the SBA from a PPP borrower's loan forgiveness amount when the borrower has received both EIDL and PPP funds. Lenders can confirm the advance amount through the PPP Forgiveness Platform.
- Instruct lenders on how to handle any remaining balance due on a PPP loan after the SBA remits the forgiveness amount to the lender, including if there has been a reduction in the forgiveness amount for an EIDL advance. Lenders must notify the borrower of the amount remitted by the SBA and when the first payment will be due. The loan must be repaid by the borrower before the maturity date, either two or five years. Previous guidance indicates that PPP loans originating before June 5, 2020, have a two-year term, unless the lender and borrower mutually agree to extend the maturity of such loans to five years. If the loan originated on or after June 5, 2020, the term is five years.
- Outline what a lender should do if a borrower received an EIDL advance in excess of the amount of its PPP loan. Lenders must notify the borrower when the first payment will be due, and the loan must be repaid by the borrower before the maturity date, either two or five years.

### An interim final rule also was issued to establish procedures for prospective borrowers who want to appeal certain SBA loan decisions.

The new interim final rule establishes numerous review procedures, including:

- The right for a PPP borrower to request a review of a lender decision or an SBA decision that a borrower is ineligible for loan forgiveness. Final SBA decisions can be appealed to the Office of Hearings and Appeals.
- Documentation requirements, time limits, and a walkthrough of the processes. Oral hearings are permitted only in specific scenarios following a request or at the judge's election.

Many clients have asked how to pay a Paycheck Protection Program loan back if it wasn't used for payroll or other qualified expenses.

At this time, loans from the federal government's small business-relief program are forgivable if at least 60% of the loan goes toward a business' payroll expenses. It must be paid back if that threshold isn't met, but no payments have to be made until 12 months from the date that a business received the money. After that time period, if the loan is not forgiven, it is expected that the loan will be paid back within two years if your loan was issued before June 5, and five years if your loan was issued after June 5. The interest rate for the PPP loan is 1%.

*The legislature is considering whether to automatically forgive any PPP Loans under \$100,000 or possibly \$150,000.*

Additional guidance on rent and owner-employee compensation:

More recently, the SBA and Treasury issued an interim final rule which establishes that owner-employees with less than a 5% stake in a C corporation or S corporation are exempted from the PPP owner-employee compensation rule for determining the amount of their compensation for loan forgiveness. The exemption's intent is to cover owner-employees who have no meaningful ability to influence decisions over how loan proceeds are allocated.

The guidance also seeks to maintain equitable treatment between a business owner that holds property in a separate entity and one that holds the property in the same entity as its business operations.

- In the first decision, the SBA and Treasury declare that the amount of loan forgiveness requested for non-payroll costs may not include any amount attributable to the business operation of a tenant or subtenant of the PPP borrower.
- In the second decision, the SBA and Treasury rule that rent or lease payments to a related party are eligible for loan forgiveness provided that (1) the amount of loan forgiveness requested for those payments is no more than the amount of mortgage interest owed on the property during the covered period that is attributable to the space being rented by the business, and (2) the lease and the mortgage were entered into prior to February 15, 2020.
- However, mortgage interest payments to a related party are not eligible for forgiveness. Per the ruling, PPP loans are intended to help businesses cover non-payroll costs owed to third parties, not payments to a business's owner that occur because of how the business is structured.

Reach Out To Fuoco Group: The PPP forgiveness applications are extremely detailed, and the final rules are still uncertain in some areas. Documentation is critical regarding any facts that could become an issue related to forgiveness. Let us help you through the process. Our PPP Professional team can be reached at [CPA@Fuoco.com](mailto:CPA@Fuoco.com). We can also help you with EIDLs, business strategy, new projections, budgeting and cost analysis.