May 1, 2020

PPP Update:
Liquidity Rule and Forgiveness Calculation

The Paycheck Protection Program ("PPP") was established by the CARES Act to provide economic relief to small businesses, including nonprofits, largely in order to cover payroll costs during this pandemic. PPP loans are SBA 7(a) loans, fully backed by the government, carrying a 1% interest rate and two-year term, and there is an opportunity to have the loan forgiven. The SBA and the Department of Treasury are refining the PPP guidelines periodically through the issuance of additional Treasury guidelines and FAQs. Most recently, in response to significant negative media coverage of large public companies accepting PPP loans, Treasury and the SBA have added new requirements that borrowers need to address.

Jewish Federations of North America (JFNA) believes strongly that the recent SBA guidance on liquidity and statements by Treasury officials have raised questions and confusion for many nonprofits about the advisability of applying for and accepting loans and that this outcome is contrary to the original legislative intent of the program. We are advocating with both Administration and legislative leaders in Washington to issue clarification that these new measures do not apply to nonprofit organizations. See here for how you can help advocate for these positions.

Following is useful information which organizations that have been approved or are applying for loans should review.

Necessity Certification and Liquidity

There was significant negative media coverage of large companies accepting PPP loans. As a result, the SBA published **questions #31 and #37** which created a new retroactive requirement on borrowers to certify their need for the loan. The question in SBA's FAQ 31 is, "Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?" The answer, however, states that "**all borrowers** still must certify in good faith that their PPP loan request is necessary." Specifically, the added language states that borrowers must take "into account their current business activity and **their ability to access other sources of liquidity sufficient to support the ongoing operations in a manner that is not significantly detrimental to the business**." [Emphasis added.]

The SBA also created a safe harbor provision: borrowers that applied for a PPP loan prior to the issuance of this new guidance and repay the loan in full by May 7, 2020, "will be deemed by the SBA to have made the required certification in good faith."

On April 29, 2020, the SBA published **question #39**, announcing that it intends to review all loans in excess of $2 million, in addition to other loans.

Factors to Consider

Borrowers should take into consideration if the current economic uncertainty makes this loan request necessary to support its ongoing operations. Your analysis should include the following:

- How is the current economic situation and volatility expected to impact the organization for the coming months? It is appropriate to be forward-looking in projecting the future impact on operations.
- Evaluate actual and projected revenue, expenses and cash flow from February through the next several months and compare to existing budget to assess the effect of the pandemic on business operations and performance. Document lost revenues, lack of liquidity and other conditions which make the loan request "necessary" to support ongoing operations.
- What other liquid assets are available which could be used during this period to fund your operations? Would using these funds be significantly detrimental to the organization?

We urge all organizations to carefully document and retain their analysis of how and why the economic uncertainty related to COVID19 necessitated the loan. See **here** for a detailed list of recommended steps.

We believe that organizations acting in good faith in seeking and securing a PPP loan because they are impacted financially because of the crisis, and maintaining proper documentation on how they determine that need, should not have a problem with accepting and using the loan. As always, we recommend that organizations consult with their outside legal and financial advisors on this good faith certification requirement.

As noted above, JFNA is advocating for a clear statement that the liquidity rule does not apply to nonprofits. It is crucial that you join in this advocacy effort.

Loan Forgiveness

PPP loans are subject to forgiveness in whole or in part if the borrower uses the loan proceeds for qualified purposes during the 8-week period following receipt of the funds and meets certain tests. Qualified loan purposes include payroll costs, mortgage interest payments, rent, and utilities. The amount of forgiveness is also contingent on retaining FTEs and maintaining salary levels of employees earning less than $100K. A reduction in FTEs compared to a defined look-back period yields a reduction in the amount of forgiveness. Similarly, salary reductions of greater than 25% will reduce the forgiveness amount. However, if workforce size and employee salaries are corrected before June 30, 2020, these reductions can be eliminated.

You can estimate your forgiveness calculation by using the loan calculator on www.JewishTogether.org (scroll down to resources) or by following the steps in the Appendix. However, please note that more detailed guidance from the SBA is needed to understand how to apply these tests accurately.

Clarification on the following questions is needed to accurately predict the amount of loan forgiveness:

1. Do you have to spend the full loan proceeds during the 8-week period that starts with loan disbursement? Can you spend the loan by June 30th, or can you spend the loan after June 30th?
2. The April 2, 2020 Interim Final Rule added a new loan requirement that "at least 75% of the loan proceeds must be used for payroll costs" and "not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs." The SBA needs to clarify whether there are two 75% tests: (a) one based on the total loan proceeds, and (b) one based on the amount eligible for loan forgiveness.

3. What is the consequence on loan forgiveness of not spending 75% on payroll costs? Do you lose a portion of forgiveness, or are you no longer eligible to have your loan forgiven?
4. Does the test for 25% reduction in salary apply if a position that was filled last year is now vacant due to resignation?
5. What happens when a laid-off employee wants to stay on unemployment and not come back on the payroll?
6. Which loan forgiveness reduction calculation must be made first, reduction in FTEs or reduction in salary?
7. What does costs incurred and payments made mean? How does this impact current payroll periods?
8. Are there steps the borrower can take to increase the amount of allowable costs in order to maximize loan forgiveness?
9. Can you prepay certain allowable expenses during the 8-week covered period?
10. Is the lenders' determination of loan forgiveness subject to appeal?

JFNA staff continue to monitor ongoing developments related to the PPP loan and other government loan programs and will continue updating information on the JewishTogether.org website. The help line is still active at SBALoans@jfna.org. And as soon we see clear guidance from the SBA on the issues above, we will offer a webinar to update everyone.

Appendix - PPP Loan Forgiveness Calculation

It is likely that your lender has a calculator on its website, and it is advisable to use that. This appendix describes how you can estimate your loan forgiveness. Please note that the calculation is not free from doubt, as additional guidance is needed from the SBA.

1. Calculate qualified payroll costs and non-payroll costs during 8-week period

Qualified Payroll Costs (Must be 75% of loan forgiveness amount)	
A. Gross salary, wages, and tips	
B. Health care expenses	
C. Vacation, parental, medical, or sick leave if not credited under the Families First Coronavirus Response Act	
D. Retirement Contributions	
E. State unemployment taxes and other state and local employer payroll taxes	
Subtotal	
F. **Less:** Amount in excess of $100,000 for employees earning more than $100,000 gross in cash compensation.	
G. **Less:** Compensation of employees whose primary residence is outside of the U.S.	
H. **Total Qualified Payroll Costs**	
Qualified Non-Payroll Costs (Cannot exceed 25% of forgiveness amount)	
I. Rent payments on pre-02/15/2020 lease agreements	
J. Mortgage interest payments on pre-02/15/2020 loans	
K. Utility payments on pre-02/15/2020 service contracts.	
L. **Total Qualified Non-Payroll Costs**	
M. **Maximum Loan Forgiveness (Row H + Row L)**	
N. **Less: Salary Reduction Test**	
O. **Less: FTE Reduction Test**	
P. **Estimated Loan Reduction (Row M – Row N – Row O)**	

Loan Forgiveness Reductions

The Salary Reduction

- For the purpose of this test, Quarter 1 of 2020 is presumed to be the most recent full quarter without wage reductions prior to the impact of COVID19.
- The amount of loan forgiveness must be reduced if an employee who earned less than $100,000 of annualized wages during the most recent full quarter (e.g., Q1 2020), had his or her wages reduced in excess of 25% during the 8-week covered period.
- The reduction amount is the difference between 75% of the employee's annualized Q1 2020 salary and the annualized gross wages paid to that employee during the 8-week period.
- If those employees' wages are fully reinstated by June 30, 2020, then the salary or wage reduction is waived.

Illustration: Sara earns $100,000 per year. Her salary was reduced 30% as a result of the pandemic.

A. Sara's annualized salary in Q1 2020	$25,000
B. 75% of the annualized Q1 salary is	$18,750
C. Sara's annualized salary during the 8-week period, reflecting the 30% reduction in wages	$17,500
D. Forgiveness wage reduction	$1,250

- This analysis needs to be done for every employee.
- Maximum loan forgiveness is reduced by the Sum of all employees' wage reductions, if any.

The Full-Time Equivalent ("FTE") Workforce Reduction

- Loan forgiveness is reduced to reflect a reduction in head count based on the following formula.

Payroll Costs + Interest on mortgage + Rent + utilities expended in the 8-week period after loan	X the quotient of	Average # of FTEs per month for the 8 weeks after loan origination	÷	Option 1: Average # of FTEs per month from 2/15/2019 to 6/30/2019 **OR** Option 2: Average # of FTEs per month from 1/1/2020 to 2/29/2020 **For Seasonal Employers:** Average # of FTEs per month from 2/15/2019 to 6/30/2019

- Borrowers should use the measurement period providing the best result compared to average FTEs during the covered period.
- FTEs are employees working at least 30 hours per week. Part-time employees, working less than 30 hours per week, can be combined based on hours they worked each week. For example, two employees, each working 15 hours per week, equal one FTE.
- If FTEs are reinstated by June 30, 2020, then the FTE reduction is waived.