SBA Paycheck Protection Program ("PPP") Loans Redux

- Second Loans to Existing Borrowers;
- Residential Coops;
- First Loans  (for those late to the party)
An Outline of the Issues

1. Do I qualify?
2. How much?
3. Loan terms?
4. Forgiveness?
5. Timing Issues!
Do I qualify?

1. **Business or 501(c)(3)** – expanded to cover residential coops, 501(c)(6), religious entities and some other nonprofits
2. **No more than 500/300 employees** (first draw v. second draw loans)
3. **Covid-related financial hardship**
How Much?

1. 2.5 times average monthly “Payroll Costs”
   a) Choice – 2019, 2020, last 12 months.

2. Payroll Costs are costs with respect to employees [1099s - NO] incurred for:
   a. salary, wage, commission, or similar compensation;
   b. payment of cash tip or equivalent;
   c. payment for vacation, parental, family, medical, or sick leave;
   d. allowance for dismissal or separation;
   e. payment required for the provisions of group health care benefits, including insurance premiums;
   f. payment of any retirement benefit; or
   g. payment of State or local (BUT NOT FEDERAL) tax assessed on the compensation of employees

MINUS . . .
Deductions from “payroll costs” before the 2.5x multiplier

1. **Compensation** of an employee over $100,000 during the year, prorated. “Compensation,” is more than “salary.”

2. Employees whose principal residence is outside of the United States.

3. Certain federal taxes (employer payments)

4. Sick leave or family leave with tax credit under the original federal Coronavirus stimulus.
Loans Terms

1. 1% interest rate, not compounded, not adjustable.
2. 5 year maturity
3. No payments until after forgiveness is determined
4. Unforgiven portion payable over remainder of term
5. Loan is from a bank or other SBA approved Lender
6. No personal guarantee and no collateral
7. 100% SBA guaranteed
8. No fees to borrower
9. Paying the loan back if not forgiven – installments – bank makes it own rules – no federal requirements
Special Rules for Second Bite at the Apple Borrowers

1. Must spend first initial loan on permissible expenses before second loan disbursement
2. 25% reduction in gross receipts for one quarter from 2019 to 2020 (exclude forgiveness).
3. Document reduction NOW if loan >$150,000; at forgiveness if <$150,000.
4. If SBA is investigating forgiveness, loan may be delayed
5. Process is generally the same
6. Forgiveness determination period is more flexible
7. Additional exclusions – Chinese companies/lobbying and political firms/public companies
8. Payroll cost calculation – either 2019 OR 2020
9. Max loan - $2,000,000
Residential Coops

1. No longer debatable – definitely qualify
2. Must certify eligibility and hardship
3. Expressly authorized by statute
4. Types of Covid-related financial hardship for coops
5. Corporate governance and approval
6. Formal board resolution for the lender
7. Covenants in existing loan documents – are you prohibited from borrowing?
8. PEOs – Employees provided by others *(depends on the facts)*
9. Ownership concentrations
Forgiveness

1. Loan Principal is forgiven in an amount equal to:
   a. All costs incurred \textcolor{red}{AND} payments made during the 8 weeks/24 weeks/anything in between after the loan in funded for:
      i. Payroll costs.
         a) For operating business, this should cover it without worrying about other items.
         b) \( \frac{24}{52} > 2.5/12 \)
      ii. Payment of interest on “mortgage” loan incurred before February 15, 2020
      iii. Payment of rent on a lease created before February 15, 2020
      iv. Utility payments on utilities for which service began before February 15, 2020
      v. Other miscellaneous lobbyist-favored expenses – should not be relevant.

2. 60% rule – use for payroll costs

3. Forgiveness may be reduced for . . .
Reduction in Forgiveness

1. Reduction in FTEEs - did you fire people?
2. Reduction in Salary – did you reduce anyone’s salary by 25%
3. Calculating either reduction is complicated so be careful.

Where Can I Get a Loan?

1. All FDIC insured banks – If they elect to participate.
2. Other lenders that are approved by the SBA
3. If you have a first loan – go back to the same lender
   a) Administratively simpler due to documentation requirements
4. Our recommendations
   a) Talk to your existing bank to see if they are participating
   b) If not, call us. We have bank clients that are interested
Miscellaneous

1. New first loan borrowers
2. Forgiveness is NOT reduction of indebtedness income.
3. Expenses paid with forgiven debt ARE deductible
4. Stay tuned – the SBA likes to change the rules in the middle of the game
5. Special rules for tipped employees
6. Must submit documentation to get forgiveness.
   a. Document every cent you spend as you spend it
7. Questions? Contact info on next slide (or find it at gdblaw.com) – email questions to us
8. Can I get a copy of the slides?
   a) Request by email
Contact Information

Jay L. Hack, Esq.
JLH@GDBLAW.COM
Gallet Dreyer & Berkey, LLP
845 Third Avenue
New York, NY 10022
212-935-3131