

Paycheck Protection Program (PPP) Update May 4, 2020

Since its inception, the Department of Treasury, Small Business Administration and Internal Revenue Service have been updating guidance and regulations for the PPP on an almost daily basis. The Department of Treasury has released additional information regarding the certifications that borrowers must provide to participate in the program. They are reminding applicants that they should be able to assert, in good faith that the PPP loan was needed after considering the following factors: the borrower's current business activity; and the borrower's ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. If an applicant has concerns about the certifications that were made and the eligibility to obtain a PPP, they should contact their attorney or other advisor who can help evaluate options and the corresponding legal implications. Any borrower that applied for a PPP loan prior to the issuance of the Treasury guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.

On May 1, 2020, the IRS released Notice 2020-32 which "clarifies that no deduction is allowed under the Internal Revenue Code (Code) for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)." This confirms that you cannot claim tax deductions that are normally fully deductible, such as covered rent obligations, covered utility payments, and payroll costs consisting of wages and benefits paid to employees. This is an unwelcome development and would appear to cut against the Congressional intent in passing the CARES Act. We are looking to see what can be done, along with many in the small business community.

On May 3, 2020, the Department of Treasury clarified in its [FAQ document \(Question 40\)](#) the impact on loan forgiveness when the "borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer. The SBA and Treasury intend to issue a final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARE's Act loan forgiveness reduction calculation."