



Paycheck Protection Program and Main Street Lending Program Updates

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1. Paycheck Protection Program Audits

On May 3, 2020, the Small Business Administration (SBA), in consultation with the Department of the Treasury, updated its Paycheck Protection Program (PPP) frequently asked questions (FAQs) to include a statement that the SBA will be performing a full audit of all borrowers who received loans in excess of \$2 million under the PPP. This announcement is in response to backlash following several public companies' disclosure that they had received funds under PPP and follows public comments by Treasury Secretary Steven Mnuchin about this new audit requirement.

If you anticipate an audit of your business, you should keep thorough documentation of how you calculated the maximum loan amount to which your business was entitled. You should also keep records of the expenditures made using loan funds, and be reasonable with respect to spending in compliance with PPP rules. This advice was already important, but is now even more so in the face of the impending audits. You should also give serious scrutiny to Question 31 of the SBA's FAQs (see our prior alert on this topic here) and contact us if you have any questions or concerns.

2. No Deductions for Expenses Paid with PPP Loan Proceeds

The IRS announced in Notice 2020-32 that taxpayers are not entitled to deduct amounts expended for covered expenses under the PPP if such expenses would otherwise result in loan forgiveness under the PPP. Loan recipients under the PPP can receive loan forgiveness based on the amount of loan proceeds expended for "eligible" expenses in the eight-week period following receipt of the loan. "Eligible expenses" include payroll costs, certain employee healthcare benefits, interest on mortgage obligations, rent, utilities and interest on other existing

debt obligations. According to Notice 2020-32, eligible expenses that result in loan forgiveness under these provisions are not deductible.

Section 1106(i) of the CARES Act provides that the amount of loan forgiveness under the PPP is excluded from gross income. Thus, while Notice 2020-32 eliminates deductibility for eligible expenses, the amount of loan forgiveness is not treated as income, rendering the PPP neutral from a tax benefit standpoint. Although the net tax benefit of the PPP is now zero, it still provides “free money” to businesses in need.

3. Expansion of Main Street Lending Program

On April 30th, the Federal Reserve announced the expansion of the Main Street Lending Program, which includes the following changes to eligibility, loan size and credit options:

- Businesses with up to 15,000 employees or up to \$5 billion in revenue can now qualify (eligibility was previously capped at 10,000 employees and \$2.5 billion in revenue).
- The SBA affiliation rules apply, such that a borrower and all of its affiliates must have less than 15,000 employees and 2019 annual revenues of less than \$5 billion.
- The minimum loan size has been reduced from \$1 million to \$500,000.
- The Federal Reserve has added a third facility – the Main Street Priority Loan Facility – for companies with more leverage.
- The interest rate for loans under the facilities is LIBOR-based rather than SOFR-based.
- Note that a business that has received a loan under PPP, or that has an affiliate that received a loan under PPP, is permitted to borrow under the Main Street Lending Program, provided it meets the Program’s eligibility requirements.

If you have any questions or concerns about the topics in this Alert, please contact [Jason Navarino](#), [Rich Lomuscio](#), [Hannah Greendyk](#) or any member of Riker Danzig’s [Corporate](#) and [Tax](#) Departments.

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