
PPP Year-End Update: Where We're At and Where We're Headed



Our Moderator – Jim Seifert



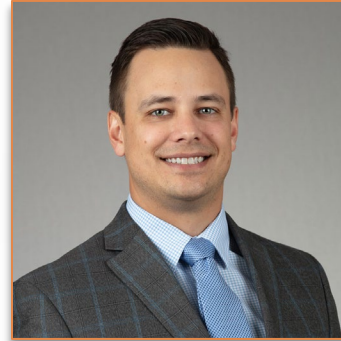
Head of Manufacturing Fafinski Mark & Johnson

Jim spent 36+ years witnessing and counseling successful manufacturers as the Chief Legal Officer of several iconic Minnesota manufacturers. He holds a Masters degree in Manufacturing Systems, is a licensed patent attorney, and leads FMJ's approach of holistically advising and representing manufacturers.

Our Speakers – Jordanne Kissner and Matt Klein



Jordanne Kissner is a member of FMJ's PPP Loan Application and Audit Team where she assists PPP borrowers and financial institutions in all aspects related to the PPP loan. Before joining FMJ, she served as in-house counsel to an SBA lender.



Matt Klein is a Principal in the Tax Department of Olsen Thielen and has years of big four public accounting and industry experience. He works primarily with privately held businesses, including S-Corporations, closely-held corporations, partnerships, and individuals.

The Paycheck Protection Program – General Aspects

- On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became U.S. law.
- One of the programs created by the CARES Act is the Paycheck Protection Loan Program (PPP) as an extension of the Small Business Administration (SBA) 7(a) loan program.
- The PPP is a loan program designed to provide a direct incentive for small businesses to keep their workers on the payroll.
- The Paycheck Protection Program Flexibility Act of 2020 was signed into law on June 5, supplemented by several Interim Final Rules issued by the SBA to expand on the rules and regulations related to PPP.
- Current law dictates that the PPP close on August 8, 2020. As such, the SBA is no longer accepting PPP applications.

The Paycheck Protection Program – Loan Basics

- PPP loans have an interest rate of 1%.
- Loans issued prior to June 5 have a maturity of 2 years. Loans issued after June 5 have a maturity of 5 years.
- Loan payments will be deferred for borrowers who apply for loan forgiveness until SBA remits the borrower's loan forgiveness amount to the lender. If a borrower does not apply for loan forgiveness, payments are deferred 10 months after the end of the covered period for the borrower's loan forgiveness (either 8 weeks or 24 weeks).
- No collateral or personal guarantees are required.
- Neither the government nor lenders will charge small businesses any fees.

PPP Loan Forgiveness – Application and Process

Top 10 items for preparing and completing your PPP loan forgiveness application:

1. Ask your PPP Lender how you should submit your PPP Loan Forgiveness Application.
2. Determine which PPP Loan Forgiveness Application Form to use and when to apply for forgiveness.
3. Review your PPP Loan Application.
4. Consider any Economic Injury Disaster Loan (EIDL) advances.
5. Determine the most beneficial Covered Period, and, if applicable, Alternative Covered Payroll Period.
6. Review the use of the PPP loan funds.
7. Be prepared to provide the necessary and required supporting documents.
8. Understand the nuanced forgiveness eligibility rules, including FTE safe harbors and forgiveness eligibility for owner-employees vs. regular employees.
9. Practice and review all calculations.
10. Determine if you may be subject to an audit.

PPP Loan Forgiveness – Required Forms

- **SBA Form 3508** (“Long Form”)
 - Default form to use if not eligible to use other simplified forms.
- **SBA Form 3508EZ** (“Simplified Long Form”)
 - Eligible to use if:
 - (1) Self-employed individual, independent contractor, or sole proprietor who had no employees at time of loan application and no employee salaries in calculation of loan amount; or
 - (2) No annual salary or hourly wage reduction greater than 25% AND no reduction in number of employees or average paid hours of employees; or
 - (3) No annual salary or hourly wage reduction greater than 25% AND was unable to operate at same level of business activity due to COVID restrictions.
- **SBA Form 3508S** (“Short Form”)
 - Eligible to use if PPP loan amount was \$50,000 or less.

PPP Loan Forgiveness – SBA Form 3508 (“Long Form”)

- Information/data needed to complete:
 - **Administrative data** (loan number, loan amount, lender number, disbursement date, etc.)
 - **Eligible payroll costs paid during:**
 - **Covered Period:** 24-week (168 day) period beginning on the loan disbursement date. May elect 8-week (56-day) if loan disbursement before June 5, 2020.
 - **Alternative Payroll Covered Period:** Borrowers with biweekly or more frequent payroll schedule may elect to calculate 24-week or 8-week period to begin on first day of first pay period following loan disbursement. Administrative convenience only.
 - **Payroll data** (wages, salary, hours) on employee-by-employee basis.
 - **Non-cash compensation payroll costs:** (1) employer contributions for employee health insurance, (2) employer compensation to employee retirement plans, and (3) employer state and local taxes assessed on employee compensation (not withholding taxes).

PPP Loan Forgiveness – SBA Form 3508 (“Long Form”)

- Information/data needed to complete (continued):
 - **Eligible nonpayroll costs during Covered Period:**
 - *Mortgage interest*
 - *Covered rent payments*
 - *Covered utility payments*

PPP Loan Forgiveness – Form 3508 Forgiveness

- Forgiveness limitations: **Salary/Hourly Wage Reduction for employees earning less than \$100,000**
 - **Base period:** January 1, 2020 to March 31, 2020
 - **Compare average annual salary or hour wage** during Covered or Alternative Payroll Covered Period to base period for each employee.
 - **If reduction is greater than 25%, amount of excess reduces forgiveness.**
 - **Safe harbors:**
 - Average annual wage or salary paid between 2/15/2020 and 4/26/2020 is equal or greater than their average annual wage or salary as of 2/15/2020.
 - Average annual wage or salary as of 12/31/20 or forgiveness application date is equal or more than average annual wage or salary as of 2/15/2020.

PPP Loan Forgiveness – Form 3508 Forgiveness

- Forgiveness limitations: **FTE Reductions**
 - **Select most beneficial base period:** (1) February 15, 2019 to June 30, 2019; (2) January 1, 2020 to February 29, 2020; or (3) for seasonal employers any consecutive 12-week period between May 1, 2019 and September 15, 2019.
 - **FTE calculation methods:** (1) 40 hours or more a week = 1.0 (cannot exceed 1.0); (2) calculate hours per week divided by 40; or (3) simplified method – can assign 0.5 FTE to any employee less than 40 hours.
 - **Reduction amount:** (1) FTEs during Covered or Alternative Payroll Covered Period is divided by FTEs base period = FTE reduction quotient; (2) FTE reduction quotient is multiplied by PPP Loan amount to arrive at amount forgiven.
 - **Safe harbors:** (1) were not able to operate at same level of business between February 15, 2019 and end of covered period because of COVID guidelines; (2) if FTEs reduced between February 15, 2019 and April 26, 2020 and FTE are restored by December 31, 2020 to same levels as February 15, 2020.

PPP Loan Forgiveness – SBA Form 3508EZ (“Simplified Long Form”)

- Information/data needed to complete:
 - **Administrative data** (loan number, loan amount, lender number, disbursement date, etc.)
 - **Same payroll information as long form.**
 - **Same eligible nonpayroll information as long form.**
 - *No forgiveness limitation calculations.*

PPP Loan Forgiveness – SBA Form 3508S (“Short Form”)

- Information/data needed to complete:
 - **Administrative data** (loan number, loan amount, lender number, disbursement date, etc.)
 - **No payroll or eligible nonpayroll information required.**

PPP Loan Forgiveness – Tax Consequences

- **Federal**

- CARES Act states that amount of loan forgiveness is not considered taxable income.
- IRS taken position that forgiveness is not taxable income, but covered expenses related to forgiveness are not deductible – ultimately PPP forgiveness is taxable.
- Bipartisan Congressional pushback but ultimately requires legislative fix.
- Treasury released guidance that if loan is reasonably expected to be forgiven in 2021, the expenses are not deductible in 2020 even if forgiveness has not been approved or applied for.

- **Minnesota**

- Will tax forgiveness proceeds but allow deductions to be deductible – result the same.
- More guidance required on timing.

PPP – Ongoing Developments

- SBA Procedural Notice released on October 2, 2020 related to Paycheck Protection Program Loans and Changes of Ownership

For purposes of the PPP, a “change of ownership” will be considered to have occurred when (1) at least 20 percent of the common stock or other ownership interest of a PPP borrower (including a publicly traded entity) is sold or otherwise transferred, whether in one or more transactions, including to an affiliate or an existing owner of the entity, (2) the PPP borrower sells or otherwise transfers at least 50 percent of its assets (measured by fair market value), whether in one or more transactions, or (3) a PPP borrower is merged with or into another entity.

PPP – Ongoing Developments

- PPP Loan Necessity Questionnaires notice released on October 26, 2020

SBA published a notice in the Federal Register seeking approval of the Office of Management and Budget (“OMB”) to release two new forms under the PPP titled the Loan Necessity Questionnaires, which include Form 3509 for profit borrowers and Form 3510 for non-profit borrowers who received PPP loans of \$2 million or more. At this time, the questionnaires are still subject to final approval of the OMB and have not been officially published by the SBA. The Loan Necessity Questionnaires have a 10-day turnaround time and request information from PPP borrowers regarding revenue, expenditures, capital improvements, liquidity, and affiliation, and supplementary documentation will be required.

PPP – Ongoing Developments

- Rev. Rul. 2020-27 issued November 18, 2020

The IRS ruled that a taxpayer that received a PPP loan and paid or incurred certain otherwise deductible expenses may not deduct those expenses in the tax year in which the expenses were paid or incurred if, at the end of that tax year, the taxpayer reasonably expects to receive forgiveness of the covered loan on the basis of the expenses it paid or accrued during the covered period, even if the taxpayer has not submitted an application for forgiveness of the covered loan by the end of that tax year.

PPP – Ongoing Developments

- **Possible expansions through new legislative stimulus package which may address the following:**
 - A second round of PPP funding, likely with more stringent eligibility requirements and reduced loan limits
 - Allow full deductions for PPP-related business expenses
 - Provide information and tools to further simplify the PPP loan forgiveness application process.

PPP – Ongoing Developments

- **Continue to monitor ongoing input by government and regulatory agencies:**
 - FAQs issued by the SBA in consultation with the Department of Treasury
 - Interim Final Rules issued by the SBA and the Department of Treasury
 - SBA Procedural Notices issued by the SBA
 - IRS Revenue Rulings issued by the IRS

How Can We Help – Olsen Thielen

- We are a full-service accounting firm celebrating our 100-year anniversary in 2021, with offices in Roseville and Eden Prairie.
- Our Manufacturing and Distribution Team can assist with any tax planning and financial accounting implications of the PPP Loan.
- Our tax professionals can help with proactive tax planning to reduce taxes, maximizing research and development credits, and structuring tax incentives for foreign sales
- Our accounting professionals can provide financial statement audits, reviews, or compilations, internal controls assessments and analysis and cost analysis, inventory pricing, forecasting, and budgeting.

How Can We Help – Fafinski Mark & Johnson

- Our **PPP Application and Audit Team** can assist with any of your PPP needs. Led by Jim Seifert, the team consists of five other members who can consult and advise.
- **For borrowers:** forgiveness application consulting and advising, forgiveness application review, audit consulting and advising, audit preparation, and more.
- **For financial institutions:** forgiveness administration and review and forgiveness customer assistance – is your customer asking a question that may constitute legal advice? Your bank or financial institution can refer this customer to FMJ for legal advice on their forgiveness application.
- **Generally:** we are commercial law firm with 17 different practice groups, which means our practice groups support each other– for example Manufacturing, HR & Employment, Litigation, Corporate, and more.
- Our pre-COVID lives may not return for at least two years, which is why it is important for to have a back-up plan in place. We are happy to discuss what this back-up plan should entail for your particular business and industry.

Questions?



Contact Information



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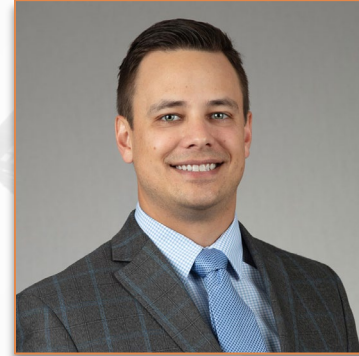
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