Applying to the Paycheck Protection Program: What Your Association Needs to Know

Presenters:

Susan Robertson, CAE

President and CEO, ASAE: The Center for Association Leadership

Mary Kate Cunningham, CAE

Vice President, Public Policy, ASAE: The Center for Association Leadership

Julia Judish

Special Counsel, Pillsbury Winthrop Shaw Pittman, LLP

Mike Tryon

Partner, RSM US LLP

Political Landscape

- How we got here
  - CARES Act excludes associations from PPP
  - Association Advocacy
  - House-passed HEROES Act would expand PPP to all 501(c) organizations
  - Senate HEALS Act would expand PPP to certain 501(c)(6) associations
- GOP Will Need Democratic Support for Passage
- Negotiation
  - House, Senate, White House
- Three Paths Forward
  - The Quick Deal
  - Wait for the Catalyst
  - Short-term Fix

The Path Ahead

- Deadlines
  - Unemployment benefits expired July 31
  - Government funding expires September 30
- The Wrench
  - Executive Order
  - Postal Service
  - Unprecedented gridlock
- Associations Can’t Wait

Existing Paycheck Protection Program

- Established by CARES Act on 3/27/2020; amended by the Paycheck Protection Program Flexibility Act of 2020 on 6/5/2020
- Only nonprofits eligible are 501(c)(3) and 501(c)(19) organizations.
- Amount of loan is determined by payroll costs—generally 2.5 times the organization’s average monthly payroll costs for the prior one-year period, subject to a $10 million cap.
- In practice, disbursed amounts substantially less than statutory cap.
- Minimum 5-year loan term (increased from 2 years).

Existing PPP: Loan Proceeds

- Loans to be used for “payroll costs” and permitted other expenses incurred between 2/15 and 12/31/2020 (extended from 6/30).
- “Payroll costs” = employee salaries or other wages (commissions or tips), paid leave, group health care premiums, retirement benefits, state & local payroll taxes, dismissal allowances.
- May also be used for mortgage interest, rent, utility payments, and interest on debts incurred before 2/15/2020.
- Only for U.S. operations.

Existing PPP: Forgiveness

- Loan may be forgiven for first 24-week period (increased from 8 weeks)
- Forgiveness period begins on date lender makes first PPP loan disbursement for documented expenditures on payroll costs, mortgage interest payments, rent, and covered utility payments.
- No more than 40% of the forgiven amount may be for non-payroll costs (up from 25%).
- No forgiveness for salaries > $100k annually, but non-cash fringe benefits for high earners forgivable
  - retirement plans contributions, health insurance premiums, state and local payroll taxes.

Existing PPP: Forgiveness Limits

- No forgiveness for FFCRA leave payments (not a windfall)
- Payments to independent contractors not included in payroll costs
- Forgiveness reduced proportionally for reductions in employees' salaries of > 25% or in number of FTEs.
- *Exception:* no proportional reduction if through rehires or salary increases borrower eliminates the FTE reduction and wage reductions no later than 12/31/2020 (extended from 6/30/2020).

Existing PPP: Forgiveness Limits (cont’d)

- *Flexibility Act Exceptions to forgiveness reductions for FTE or salary cuts:*
  - If borrower documents that it could not rehire former employees or qualified new employees by 12/31/2020, **or**
  - If borrower documents that it cannot return to pre-2/15/2020 levels of business activity due to compliance with COVID-19-related federal law or guidance on sanitation standards, social distancing, or other worker or customer safety measures.

Existing PPP: Certifications

- PPP applicants must make certifications in good faith, including that:
  - Current economic uncertainty makes the **PPP loan "necessary… to support [its] ongoing operations**," and
  - Funds "**will be used to retain workers and maintain payroll** or make mortgage payments, lease payments, and utility payments."
- Treasury guidance: consider "current business activity" and "ability to access other sources of liquidity sufficient to support their ongoing operations **in a manner that is not significantly detrimental to the business**."
- 5/13/2020 SBA safe harbor: "Any borrower that, … with its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith." Only applies to *past* borrowers.

Path forward: Current Proposals

- **HEROES Act (House bill)**
  - Any 501(c) entity would be able to apply for PPP funds.
  - 25% of PPP funds solely for the use of all nonprofits; half to go to smaller nonprofits with < 500 employees.

Path forward: Current Proposals

- **Continuing Small Business Recovery and PPP Act (Senate bill):**
  - 501(c)(6)s with < 300 employees eligible unless they receive > 10% of "receipts" from "lobbying activities" or "lobbying activities" comprise > 10% of "total activities."
  - No PPP funds can be used on lobbying.
  - Undefined terms raise questions.
  - Sen. Collins amendment to lower size cap to 150 employees.

PPP: Accounting Implications

- **AICPA Technical Q&A**
  - The American Institute of CPAs issued a TQA in June 2020 to provide guidance for nongovernmental entities to account for PPP loans.
  - NFP organizations must choose a path from two choices offered:
    - Record as a loan that is repayable, or
    - Record as a conditional contribution.

PPP: Accounting Implications

- **Option 1: Record as a loan payable**
  - Account for the loan as a liability in accordance with *FASB ASC 470* and accrue interest in accordance with *FASB ASC 835-30.*
  - **Initial recognition:** Record a loan payable.
  - **Forgiveness:** Record as a write-off to the outstanding loan payable balance and a gain on debt extinguishment when the NFP is ***notified*** the loan is forgiven.
  - *Note: No need to impute additional interest at a market rate as interest rates for PPP loans are prescribed by governmental agencies.*

PPP: Accounting Implications

- **Option 2: Record as a conditional contribution** *(FASB ASC 958-605)*
  - In order to take this stance, the NFP must substantiate that they expect to meet the PPP's eligibility criteria for forgiveness. No recognition until conditions are <u>substantially met</u> or <u>explicitly waived</u>.
  - **Initial recognition:** Record as a liability (refundable advance or deferred grant revenue).
  - **Forgiveness:** Reduce the liability balance and recognize revenue (contribution or grant income) once the forgiveness conditions have been substantially met.
  - *Note*: *NFP entities must disclose the terms of the loan, how it qualified for the loan and its accounting policy for the loan in their financial statements.*

Contact us for more information:

Susan Robertson, CAE
President and CEO
ASAE: The Center for Association Leadership
srobertson@asaecenter.org

Mary Kate Cunningham, CAE
Vice President, Public Policy
ASAE: The Center for Association Leadership
mcunningham@asaecenter.org

Julia Judish
Special Counsel
Pillsbury Winthrop Shaw Pittman, LLP
julia.judish@pillsburylaw.com

Michael Tryon
Partner
RSM US LLP
mike.tryon@rsmus.com

asae BUSINESS SOLUTIONS 401(k) retirement program Re-envisioning the Future

asae learning