



PAYCHECK PROTECTION PROGRAM LOAN ELIGIBILITY, USE AND FORGIVENESS

GNYADA DEALER WEBINARS

MAY 8, 2020



**Greater New York
Automobile Dealers
Association**



MARK SCHIENBERG
GNYADA PRESIDENT



Greater New York
Automobile Dealers
Association



SUSAN BIEBER
VICE PRESIDENT — DEALER SERVICES



Greater New York
Automobile Dealers
Association

WITH US TODAY



Richard N. Sox, Esq.

BASS SOX MERCER
ATTORNEYS AT LAW

PPP Loan Eligibility



Please note that the information provided below is subject to change with additional guidance interpreting the rules governing the Payment Protection Program from the U.S. Department of Treasury or Small Business Administration.

PPP Loan Eligibility

- **Recent SBA Guidance on Eligibility for PPP Loan**
 - Certification of Need
 - May 14, 2020 Safe Harbor for Return of Loan Proceeds
 - Applies to Publicly-Traded and Privately-Held Entities

PPP Loan Use

BSM
BASS SOX MERCER
ATTORNEYS AT LAW

- **Permitted Use of Loan Proceeds**
 - **Qualifying Payroll Costs**
 - *Employee salary & wages*
 - *Required health and retirement benefits*
 - *Leave pay in certain situations*

PPP Loan Use continued

- **Permitted Use of Loan Proceeds**
 - **Qualifying Non-Payroll Costs**
 - *Interest on Mortgage Obligations*
 - *Rent Payments*
 - *Utility Payments*
 - *Other Debt (not included in Forgiveness)*

PPP Loan Forgiveness



- **Loan Forgiveness Criteria**
 - Employee Headcount Analysis
 - Employee Payroll Analysis
 - 75%/25% Test
 - Exceptions to Reduction of Forgiveness Amount

PPP Loan Forgiveness



- Up to 100% of Loan may be Forgiven
- Beginning balance of Loan Forgiveness:
 - Total of Loan Proceeds used to pay Qualifying Payroll Costs and Non-Qualifying Payroll Costs;
 - Expended during the 8-week period immediately following receipt of the Loan Proceeds.

PPP Loan Forgiveness



Employee Headcount Test

- Average Full-Time Equivalent (“AFTE”) positions for each pay period during 8-week test period and divided by one of the following base periods:
 - AFTEs for period 2/15/19 thru 6/30/19; **or**
 - AFTEs for period 1/1/20 thru 2/29/20.
- The goal is for the resulting percentage to be at least 100%, in other words, having at least as many AFTEs during the 8-week test period as you had during one of the two base period.

Recommendation – *Choose the base period with the lowest AFTE #*

PPP Loan Forgiveness

Employee Headcount Test Continued

If the resulting percentage is less than 100% then the Forgivable Loan Amount will be reduced by the percentage difference between 100% and the percentage resulting from the AFTE test.

PPP Loan Forgiveness



Continuing Example (Headcount Test):

- AFTEs during 8-Week Test Period = 90
- Lowest number of AFTEs during either Base Period = 100
- Resulting percentage reduction in Beginning Forgivable Loan Amount = 10%

Dealership has a \$100,000 loan from which it utilizes \$70,000 for Qualifying Payroll Costs and \$15,000 for Qualifying Non-Payroll Costs for a total Beginning Forgivable Loan Amount of \$85,000.

PPP Loan Forgiveness

Continuing Example (Headcount Test):

The 10% reduction in Forgivable Loan Amount is applied to the \$70,000 equaling \$63,000 which is then added to the \$15,000 to equal \$78,000 for the New Maximum Forgivable Loan Amount.

PPP Loan Forgiveness



Employee Payroll Test

- Compare each individual employee's total salary and wages during the during the 8-week test period (pro rated weekly) against the employee's total salary and wages in the 1st quarter of 2020 (pro rated weekly).

PPP Loan Forgiveness

- **Employee Payroll Test Continued**
- Any individual employee whose highest pay period in 2019 would be annualized to salary and wages of greater than \$100,000 is excluded from Payroll Test.
- The Forgivable Loan Amount is reduced by the dollar amount of salary and wages for any employee that has a reduction in salary and wages of more than 25%.

PPP Loan Forgiveness



Employee Payroll Test Continued

Note – Because the Legislation focuses on any single pay period which when annualized results in a rate of pay of over \$100,000, you could have a salesperson who had a very strong week or month such that although his or her historic annual salary and wages don't exceed \$100,000 for purposes of this analysis he or she would be considered making more than \$100,000 and removed from the Payroll Test.

PPP Loan Forgiveness



Continuing Example (Payroll Test):

Employee "A" was paid salary and wages of \$5,000 during the 8-week test period.
Prorated weekly salary and wages = \$625.00.

Employee "A" was paid salary and wages of \$20,000 during the 1st quarter of 2020.
Annualized pay does not exceed \$100,000.
Prorated weekly salary and wages = \$1,538.46.

PPP Loan Forgiveness

Continuing Example (Payroll Test):

Difference in weekly salary is \$913.46 or a 59% decrease in salary and wages. The difference between a permissible reduction of 25% in the base weekly salary, which would be \$1,153.85 and the actual reduction of salary and wages during the 8-week test period is \$528.85.

Multiplying the weekly shortfall in salary and wages below the permissible 25% of \$528.85 by the 8-week period results in a total reduction in the Forgivable Loan Amount of \$4,230.80.

PPP Loan Forgiveness



Continuing Example (Payroll Test):

Dealership has a \$100,000 loan amount from which it utilizes \$70,000 for Qualifying Payroll Costs and \$15,000 for Qualifying Non-Payroll Costs for a total Beginning Maximum Forgivable Loan Amount of \$85,000, the 10% reduction in Forgivable Loan Amount from the Employee Headcount analysis resulted in a reduction of the Qualifying Payroll Costs to a new total of \$63,000 and a new total maximum Forgivable Loan Amount of \$78,000.

PPP Loan Forgiveness

- Continuing Example (Payroll Test):
- As a result of the Payroll Test, the portion of the Forgivable Loan Amount applicable to the Qualifying Payroll Costs equaling \$63,000 is reduced by \$4,230.80 for a new total of \$58,769.20 for Qualifying Payroll Costs, and after adding the \$15,000 in loan proceeds expended on Qualifying Non-Payroll Costs, the New Maximum Forgivable Loan Amount is \$73,769.20.

PPP Loan Forgiveness



Percentage of Use of Funds Test (75%/25% Calculation)

- At least 75% of Forgivable Loan Amount must be expended on Qualifying Payroll Costs.
- No more than 25% of Forgivable Loan Amount expended on Qualifying Non-Payroll Costs.

PPP Loan Forgiveness



Continuing Example:

In our continuing example, the New Maximum Forgivable Loan Amount is \$73,769.20. The amount of Qualifying Payroll Costs of \$58,769.20 is approximately 80% of the maximum Forgivable Loan Amount and the \$15,000 in Qualifying Non-Payroll Costs is approximately 20% thus meeting the 75%/25% test.

Without the application of any potential exceptions to the reduction of Forgivable Loan Amount resulting from the Employee Headcount and Payroll Analysis, the portion of the dealership's \$100,000 PPP Loan which will be forgiven is \$73,769.20.

PPP Loan Forgiveness

If the amount of Qualifying Payroll Costs was less than 75% as compared to the Qualifying Non-Payroll Costs then you would reduce the Qualifying Non-Payroll Costs until they were 25% of the total (or $\frac{1}{3}$ of the Qualifying Payroll Costs).

PPP Loan Forgiveness



Exceptions to Reductions Resulting from Employee Headcount and Payroll Tests

- If the number of AFTEs as of 2/15/20 falls during the period between 2/15/20 and 4/26/20 then as long as the number of AFTEs is restored to the 2/15/20 level by 6/30/20 there will be no reduction under the Employee Headcount Test for that position.

PPP Loan Forgiveness

- **Exceptions to Reductions Resulting from Employee Headcount and Payroll Tests**
- If any employee has their salary and wages reduced by more than 25% from 2/15/20 as compared to their salary and wages paid between 2/15/20 and 4/26/20 then as long as that reduction is eliminated by 6/30/20 there will be no reduction under the Employee Payroll analysis for that employee.

PPP Loan Forgiveness



New Guidance on Exception to Reductions Resulting from Employee Headcount

- The SBA intends to issue a new rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the loan forgiveness reduction calculation.

PPP Loan Forgiveness

- **New Guidance on Exception to Reductions Resulting from Employee Headcount**
- The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower.

PPP Loan Forgiveness

- **New Guidance on Exception to Reductions Resulting from Employee Headcount**
- SBA warns that employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

PPP Loan Forgiveness



Best Practices for Maximizing Loan Forgiveness Amount

- Consider placing the loan proceeds in a segregated bank account after consultation with the dealership's accountants.

PPP Loan Forgiveness

- **Best Practices for Maximizing Loan Forgiveness Amount**
- Either make payments directly from that account to cover Qualifying Payroll Costs and Qualifying Non-Payroll Costs or transfer the exact amount of the particular expense from the segregated account to the operating account from which you make the payment.
- Use a spreadsheet to carefully track all expenditures of Loan Proceeds.

PPP Loan Forgiveness



Best Practices for Maximizing Loan Forgiveness Amount

- Run pro formas on your expected expenses for the 8-week period following receipt of the loan proceeds. Use as much of the loan proceeds as possible for Qualifying Payroll Costs during the 8-week period.

PPP Loan Forgiveness



Best Practices for Maximizing Loan Forgiveness Amount

- Be prepared to run a detailed payroll spreadsheet for the period January 1, 2019 thru June 30, 2020 and retain documentation reflecting the exact hire date and termination date (if applicable) for each employee during that period.

PPP Loan Forgiveness

- **Best Practices for Maximizing Loan Forgiveness Amount**
- Schedule 2 full months of payroll during the 8-week period to maximize loan proceeds which can be forgiven. Payroll payments must be made in due course and not for advancement of unearned wages, future bonuses, etc.

PPP Loan Forgiveness

- **Best Practices for Maximizing Loan Forgiveness Amount**
- Attempt to avoid reducing the number of positions or payroll amounts of more than 25% for any employee during the 8 weeks following receipt of the loan proceeds in comparison to the base periods in the legislation, even if it means paying some employees to sit at home.

PPP Loan Forgiveness

- **Best Practices for Maximizing Loan Forgiveness Amount**
- If you eliminated positions or reduced pay of one or more employees by more than 25% between 2/15/20 and 4/26/20, then make plans to restore those positions and the prior pay amounts, preferably for the same employee if he or she is available, no later than 6/30/20.

PPP Loan Forgiveness



Best Practices for Maximizing Loan Forgiveness Amount

- Make Qualifying Non-Payroll Cost payments based strictly upon the terms of any lease agreement, mortgage agreements and other loan documentation as those agreements existed on 2/15/20. Do not artificially increase rent payments under a lease or alter the terms of other loan documents.

PPP Loan Forgiveness

- **Best Practices for Maximizing Loan Forgiveness Amount**
- Begin applying for loan forgiveness as early as you are able to gather the necessary supporting documentation following the conclusion of the 8-week period and after you have rectified any headcount or salary reductions.

Q & A

- **Questions?**



Contact Information

- Richard N. Sox, Esq.
- Bass Sox Mercer
- www.dealerlawyer.com

850-878-6404