

# Legal and Accounting Answers to Questions on CARES Act Loans





Jaimie P. Schwartz  
Shareholder, Bernstein Shur  
Moderator

# Bernstein Shur's Coronavirus Legal Response Team



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**Berry Talbot Royer**  
CERTIFIED PUBLIC ACCOUNTANTS

**BERNSTEIN SHUR**

# Berry Talbot Royer Panelists:



**Michael C. Royer, MST, CPA**

President, Berry Talbot Royer

Michael is the president and managing partner of Berry Talbot Royer. He has over 25 years of accounting experience working at the international accounting firm Arthur Anderson and Co., a "Big 8" accounting firm, as well as at Reliant Energy, a Fortune 500 company, based in Houston Texas. Currently, he is in charge of the corporate and individual tax and accounting team at Berry Talbot Royer. Michael is a member of the American Institute of Certified Public Accountants, the Maine Society of Certified Public Accountants, and the National Society of Tax Professionals.



**Katie Zenko, CPA**

Tax Partner, Berry Talbot Royer

Katie holds a bachelor's degree in Accounting and Finance from the University of Southern Maine and an associate's degree in Business from Southern Maine Community College. Katie started working at Berry Talbot Royer in 2006. She is proficient in both her native Belarusian and Russian (as well as English, of course!) Katie proudly became a Tax Partner in October 2012. She is a dedicated professional and provides strong financial advice to our staff and clients, as well as comprehensive accounting and tax services. She is also a certified Lean Six Sigma Green Belt.

# Agenda

- 1) Welcome and Overview
- 2) SBA Disaster Loans
- 3) SBA Paycheck Protection Plan Loans
- 4) How to Calculate Borrowing and Forgiveness
- 5) Employee Retention Tax Credit
- 6) Question and Answer



# SBA Economic Injury Disaster Loans

- **SBA Disaster Loans –**

- Maine was first state to obtain necessary disaster certification of all counties
- New Hampshire – all ten counties approved disaster certification
- Up to 30 year term, 3.75% rate with no repayment for 4 months
- Small businesses (functionally most businesses in Maine) Please review the loan application at [disasterloan.sba.gov](https://disasterloan.sba.gov) for more details on the loan process, but you will need to provide, at a minimum:
  - Completed SBA loan application (SBA Form 5).
  - Tax Information Authorization (IRS Form 4506T) for the applicant, principals and affiliates.
  - Complete copies of the three most recent Federal Income Tax Returns. If you do not have your 2019 Tax return complete, please returns for 2016 - 2018.
  - Schedule of Liabilities (SBA Form 2202).
  - Personal Financial Statement (SBA Form 413).
  - Financial statements for business.



# Paycheck Protection Program: Eligibility & Terms

## Eligibility

- Businesses (including nonprofits, sole proprietorships, self-employed individuals, and independent contractors) with 500 or fewer employees, in operation on Feb. 15, 2020, who need the PPP Loan to support ongoing operations, are eligible
- Special affiliation rules, further expanding eligibility, discussed on next slide
- Borrowers must certify that PPP Loan will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments
- Other disaster relief, such as EIDL loans, may in some instances be refinanced as a PPP Loan and/or permitted alongside PPP Loans (if not for same purpose/amount)

## Loan Terms

- Maximum loans lesser of (1) \$10M or (2) 2.5x Pre-COVID-19 monthly payroll costs
- 0.5% fixed interest rate
- Two-year terms (payments deferred for six months; interest accrues)
- Each eligible business can only apply for one PPP Loan



# Paycheck Protection Program: Special Affiliation Rules

SBA loans are typically subject to aggregation with affiliates. The SBA affiliation test is complicated, but generally includes aggregation of investors who have certain controls features over the subject company. During the covered period, the affiliation test for PPP Loans does not apply to:

- Any business with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned a NAICS code beginning with 72 (generally the hospitality industry – restaurants, hotels and similar)
- Any business operating as a franchise that is assigned a franchise identifier code by the SBA.
- Any business concern that receives financial assistance from a licensed SBIC (a privately-owned investment company that is licensed by the SBA).





# Paycheck Protection Program: Certification

An eligible recipient applying for a covered loan shall make a good faith certification:

- That the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
- Acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- That the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and
- During the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.



# Paycheck Protection Program: Calculating Loan Amount

## Loan Amounts Based on Pre-COVID-19 Employment Levels

- Maximum loan is lesser of (1) \$10M or (2) 2.5x Pre-COVID-19 monthly payroll costs
- Pre-COVID-19 payroll costs determined during one of two look-back periods:
  - (1) One-year period leading up to date of application; OR
  - (2) Jan. 1, 2020 – Feb. 29, 2020 (only if out of business during Feb. 15, 2019 – June 30, 2019)
- Payroll costs have specific definition under CARES Act. They include:
  - Employee compensation up to \$100,000/year
  - Group retirement costs;
  - Group health and other insurance premiums;
  - State and local employment taxes paid by employer; and
  - Paid vacation, parental, family, medical, or sick leave costs (except those costs that are eligible for credit under Families First Coronavirus Response Act)
- Payroll costs relevant to loan *amount* and available loan *uses* and loan *forgiveness*



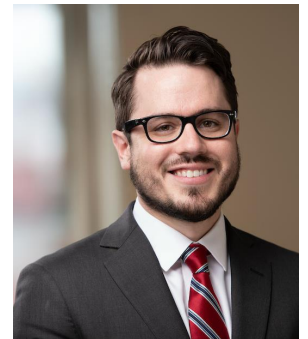
# Paycheck Protection Program: Calculating Loan Forgiveness

## Loan Forgiveness for Eligible Costs During 8 Weeks Post-Origination

- Loan portion spent on eligible costs during the eight weeks that follow origination may be forgiven. These costs are a subset of allowable uses, and they include:
  - "Payroll costs" (as defined in prior slide);
  - Rent; mortgage *interest*; and utilities
- Only 25% of loan forgiveness is expected to be approved for non-payroll costs

## Loan Forgiveness May Be Reduced for Workforce Reductions

- Whatever portion of the loan is eligible for forgiveness will be *reduced* (or eliminated) based on reductions to (1) number of full-time equivalent employees; and/or (2) salaries (beyond 25% reduction) for employees who earn less than \$100,000
- Loan forgiveness penalty will be eliminated if an employer re-hires, or increases salaries, to pre-COVID-19 levels by June 30, 2020



# Paycheck Protection Program Summary

- Paycheck Protection Program loan can be applied for on April 3. Ambiguity in the timing for independent contractors and self-employed individuals.
- Loan amount calculation – 2.5 times the average total monthly payments incurred during 1-year period before the date on which the loan is made – the wording in the Act. PPP loan application – specifies most Applicants will use the average for 2019.
- Not all wages and salaries are included – exclude costs over \$100,000 on an annualized basis for each employee.
- Recommendation – quarterly payroll tax returns may not report the correct amount of wages. Include pre-tax items if you provide ANY benefits to your employees.
- You can apply for both PPP loan and EIDL loan. Cannot double dip on expenses. Consider segregating loan proceeds.
- Consider your industry and how it was impacted by the current situation.



# PPP Loan Forgiveness

- Forgiveness is not automatic – will be applied for by the borrower. SBA is given 30 days to develop more guidance on the process.
- PPP is designed to protect employees. Loan forgiveness will not be for the full loan amount if:
  - Number of employees is reduced in the 8-week period following the receipt of the PPP loan (compared to a prescribed time period)
  - Salaries and wages are reduced in excess of 25% (compared to a prescribed time period)
  - Conclusion: watch full time equivalent (FTE) employee count – reduction may hurt you more than the reduction in wages
- **Coordination of PPP with other sections of the CARES Act**
  - If EIDL grant of \$10,000 is received, and you are approved for a PPP loan, the advance amount will reduce the loan forgiveness amount
  - If PPP loan is received, employers are not eligible for the delay of payment of employer payroll taxes. Still more ambiguity – not clear whether the mere receipt of a PPP loan disqualifies the taxpayer from delaying the social security tax payments or causes the deferred tax payments to become due once the indebtedness is forgiven.



# Employment & Practical Considerations

## Continuing Employment Obligations

- For most, continuing your workforce (without layoff or furlough) with the PPP loan means that employment laws continue to apply
  - Emergency Paid Sick Leave Act
  - Emergency Family & Medical Leave Expansion Act
  - Pre-COVID-19 laws: Family & Medical Leave Act, Maine Whistleblower Protection Act, non-discrimination laws.

## Other CARES Act Issues

- Expansion of Unemployment Compensation (Pandemic and Emergency Increase)
  - Effect on considerations of forgiveness of PPP loans
- Employee Retention Tax Credit
  - Up to half employees' wages if you have 50% reduction in gross receipts or your business is closed, up to \$5,000 per employee.
  - One or the other—if no immediate cash flow or loan needed, talk through both with your accountant.



# Q&A Session



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# Resources

- 1) [www.btr-cpa.com](http://www.btr-cpa.com)
- 2) [www.bernsteinshur.com](http://www.bernsteinshur.com)
- 3) <https://disasterloan.sba.gov/ela/Information/Index>
- 4) <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>
- 5) <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>