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560 Wheeler Road, Hauppauge, NY 11788
(631) 234-5588



ZOOM PROGRAM

CORONA VIRUS RECOVERY Small Business Provisions

FACULTY

Andrew P. Ross, CPA, CFE, CVA, PFS
Gabe H. Shurek, CPA, CFF, CFE, CVA

Moderator: Peter D. Tamsen, Esq., Dean of Suffolk County Academy of Law

June 11, 2020
Suffolk County Bar Association, New York

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Andrew P. Ross

Andrew P. Ross, CPA, CFE, CVA, PFS, is a Partner at Gettry Marcus CPA, P.C. and is a member of the firm's Business Valuation & Litigation Services Group, one of the largest in the New York metropolitan area with many credentialed business valuation professionals and a team of forensic accountants. Mr. Ross is a Certified Public Accountant, Certified Fraud Examiner, Certified Valuation Analyst and Personal Financial Specialist.

With over 30 years of experience, Mr. Ross has been engaged by numerous law firms to provide litigation and forensic accounting services on behalf of clients involved in stakeholder disputes, matrimonial dissolutions and other litigation related matters. Mr. Ross also provides accounting and tax services to his clients, many of whom are in the service, real estate, manufacturing, and wholesale industries.

Mr. Ross has presented to a variety of groups, including attorneys and professional networking groups, on topics such as "Understanding the Business Valuation Process for Attorneys", "Accounting and Auditing Update", "SAS 103 – New Audit Documentation Rules," "Analytical Procedures in Audits and Reviews," "SAS 104-111 – Risk Assessment Standards," and "Highlights of the New Tax Law." He has also authored articles on the topic of forensic accounting and fraud prevention. Mr. Ross was also a contributor to the book "Financial Forensics Body of Knowledge", a comprehensive guide to financial forensics and forensic accounting.

Gabe H. Shurek

Gabe H. Shurek is a Partner at Gettry Marcus CPA, P.C. and is a member of the firm's Business Valuation & Litigation Services Group, one of the largest in the New York metropolitan area with multiple credentialed business valuation professionals and a team of forensic accountants. With over 17 years of experience in forensic accounting, fraud detection and business valuation, Mr. Shurek has been engaged by attorneys, businesses, insurance companies and individuals to perform services in complex litigation settings. He has managed engagements in various types of federal and state matters, including ownership disputes, contract disputes, intellectual property disputes, accountants' liability, marital dissolutions and gift and estate tax filings. In addition, Mr. Shurek has applied forensic accounting techniques in bankruptcy matters, where he has represented bankruptcy Trustees, creditors' committees and debtors in assignments such as solvency & preference analysis, and investigations for fraudulent transfers.

Mr. Shurek has been retained in health care-related fraud investigations, including medical practices suspected as being fraudulently incorporated. He has an extensive knowledge in the application and use of data mining software, an important tool in converting large quantities of data from its original content into a manageable database to perform financial analytics. Mr. Shurek is a Certified Public Accountant (CPA), Certified in Financial Forensics (CFF), a Certified Fraud Examiner (CFE) and a Certified Valuation Analyst (CVA).



GETTRYMARCUS



ALWAYS LOOKING DEEPER.™

Navigating the Paycheck Protection Program

Presented to:

Suffolk County Bar Association

June 11, 2020

Presented by:

Andrew P. Ross, CPA, CFE, CVA, PFS

Gabe H. Shurek, CPA/CFF, CFE, CVA

History of the CARES Act's Paycheck Protection Program Loans ("PPP")

- Signed into law on March 27, 2020 as part of the CARES Act (the "Act")
- Application process began April 3, 2020
- Loans to be used for payroll costs, as defined in the Act, and other specific expenses
- Loan proceeds must be spent during a specified Covered Period (CP) or Alternative Payroll Covered Period (APCP)
- Paycheck Protection Program Flexibility Act of 2020 (PPPFA) signed into law on June 5, 2020



Overview of PPP Loan Process

- The PPP loan process can be viewed as having two distinct phases:
 - Application Phase - Includes preparing detailed calculations to determine the maximum amount of borrowing
 - Forgiveness Phase – Requires planning and certain calculations be made to ensure maximum loan forgiveness



Lending partner



Loan



Small business
(You)





Application Phase

- The applicant can borrow the lesser of \$10M or 2.5 times calculated average monthly payroll cost, as defined in the Act (the “Payroll Costs”)
- The Act defines Payroll Costs as wages (capped at \$100K per employee), plus health insurance, retirement benefits, and certain state and local taxes
- The calculation is prepared on an employee-by-employee basis



Forgiveness Phase - Paycheck Protection Program Flexibility Act of 2020 (“PPPFA”)

- Covered Period amended to 24 weeks or December 31, 2020, whichever comes first
 - Loans prior to PPPFA can choose 8 or 24 week Covered Period
- Spending allocation changed to 60% - 40% ratio
- 2 year term revised to 5 - 10 years for loans after PPPFA
 - Loans prior to PPPFA can adopt 5 -10 year term





Forgiveness Phase - Paycheck Protection Program Flexibility Act of 2020 (“PPPFA”) (con’t.)

- FTE employee reduction exemptions added
 - Inability to rehire employees who were employed on 2/15/20
 - Inability to hire similarly qualified employees before 12/31/20
 - Inability to return to 2/15/20 business levels due to COVID-19
- Loan payback deferment extends until forgiveness is determined
- PPP borrowers now eligible for payroll tax deferment



Loan Forgiveness Calculation Form

Schedule A

Schedule A Worksheet

**Paycheck Protection Program
Loan Forgiveness Application**

OMB Control Number 3245-0407
Expiration Date: 10/31/2020

PPP Schedule A Worksheet

Table 1: List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of less than or equal to \$100,000 for all pay periods in 2019 or were not employed by the Borrower at any point in 2019.

Employee's Name	Employee Identifier	Cash Compensation	Average FTE	Salary / Hourly Wage Reduction
FTE Reduction Exceptions:				
Totals:		Box 1	Box 2	Box 3

Table 2: List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of more than \$100,000 for any pay period in 2019.

Employee's Name	Employee Identifier	Cash Compensation	Average FTE
Totals:		Box 4	Box 5

Attach additional tables if additional rows are needed.

FTE Reduction Safe Harbor:

Step 1. Enter the borrower's total average FTE between February 15, 2020 and April 26, 2020. Follow the same method that was used to calculate Average FTE in the PPP Schedule A Worksheet Tables. Sum across all employees and enter: _____

Step 2. Enter the borrower's total FTE in the Borrower's pay period inclusive of February 15, 2020. Follow the same method that was used in step 1: _____.

Step 3. If the entry for step 2 is greater than step 1, proceed to step 4. Otherwise, the FTE Reduction Safe Harbor is not applicable and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.

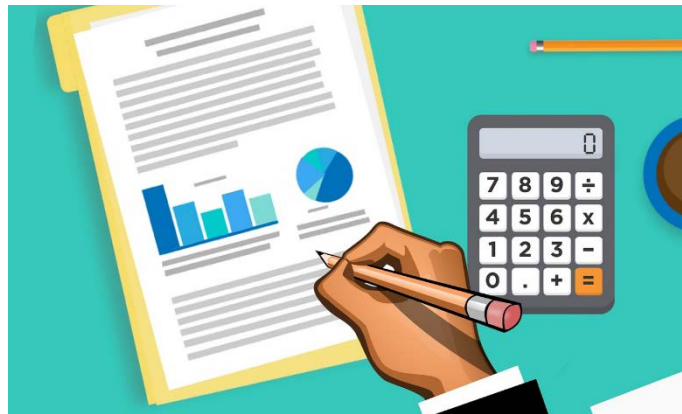
Step 4. Enter the borrower's total FTE as of June 30, 2020: _____.

Step 5. If the entry for step 4 is greater than or equal to step 2, enter 1.0 on line 13 of PPP Schedule A; the FTE Reduction Safe Harbor has been satisfied. Otherwise, the FTE Reduction Safe Harbor does not apply and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.



How to Obtain Loan Forgiveness

- Three Tests In Calculating Forgiveness:
 - 60%-40% Test (Formerly 75%-25%)
 - Payroll Costs
 - Non-Payroll Costs
 - Salary/Hourly Wage Reduction Test
 - Average Full-Time Equivalent (FTE) Test





60%-40% Test (Formerly 75%-25%)

- Pursuant to the Act's provisions, funds must be utilized for:
 - Payroll Costs (as defined by the Act)
 - Non-Payroll Costs
 - Rent
 - Utilities
 - Certain “covered” mortgage interest
- At least 60% of funds must be utilized for Payroll Costs
- Up to 40% of funds can be used for Non-Payroll Costs
- Funds not utilized in the prescribed manner will not be forgiven



Payroll Costs

- Compensation capped at \$100,000, prorated over the Covered Period
- Compensation includes:
 - Salary, wages, commissions or similar compensation
 - Cash tips or the equivalent
 - Payments for leave
 - Allowance for separation or dismissal
- Employee Benefits:
 - Group health insurance
 - Retirement benefits
- Certain State and Local Taxes



Payroll Costs - Alternative Payroll Covered Period

- If borrower is funded in middle of pay period, borrower can choose Alternative Payroll Covered Period, which aligns twenty-four week (or selected eight week) period with the first day of a pay cycle
- Only applies to payroll, not to rent, utilities or mortgage interest



Non-Payroll Costs

- Rent obligations:
 - Real or personal property
 - Lease agreement must be in force before February 15, 2020
- Utility payments:
 - Electricity, gas, water, transportation, telephone or internet
 - Respective services must have begun prior to February 15, 2020
- Interest payments:
 - Mortgage obligation
 - Real or personal property





Salary/Hourly Wage Reduction Test

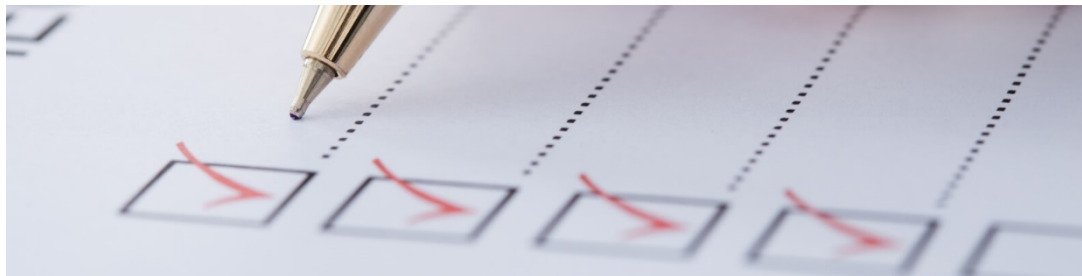
- For employees who earn $<$ or $=$ \$100,000, compare:
 - 24-week CP or APCP
 - and-
 - Period of January 1, 2020 through March 31, 2020
- Forgiveness reduced for employee average annual salary/hourly wage reduction $>$ 25%
- Safe Harbor can be met
- Employees greater than \$100,000 not included





Salary/Hourly Wage Reduction Test - Safe Harbor Requirements

- Borrower exempt from Salary/Hourly Wage Reduction Test if following applies:
 - Borrower reduced annual wage subsequent to February 15, 2020 through April 26, 2020; and
 - Borrower restored the compensation levels by December 31, 2020
 - Restored to or greater than annual wage levels in the February 15, 2020 pay period
- PPP funds still must be used!





Average Full-Time Equivalent Test

- Compares number of FTE Employees in the CP or APCP to one of two chosen reference periods:
 - FTEs from February 15, 2019 to June 30, 2019 or
 - FTEs from January 1, 2020 to February 29, 2020
- Forgiveness reduced if average weekly number of FTEs in CP or APCP $<$ chosen reference period
- Safe Harbor can be met





Average FTE Test – Calculation Methods

- Standard Method - For each employee:
 - Enter the average number of hours paid per week
 - Divide by 40 hours
 - Round total to the nearest tenth
- Simplified Method - For each employee:
 - May be used at the election of borrower
 - Assign a 1.0 for employees who work 40 hours or more and 0.5 for employees who work fewer hours
- Choose method that maximizes loan forgiveness





Average FTE Test - Safe Harbor Requirements

- Borrower exempt from Average FTE Test if following applies:
 - Borrower reduced FTE employee levels subsequent to February 15, 2020 through April 26, 2020; and
 - Borrower restored FTE employment levels by December 31, 2020
 - Restored to FTE employee levels in the February 15, 2020 pay period
- Again, PPP funds still must be used!





FTE Reduction Exemptions

- Employees exempt from Average FTE Test if they:
 - Were offered their position back, but the employee refused
 - Offer must be good-faith and written
 - Must be for same salary and same numbers of hours as just before separation
 - Maintain records documenting offer and rejection
 - Inform state unemployment insurance office of rejection within 30 days
 - Were terminated for cause
 - Voluntarily resigned
 - Voluntarily requested and received a reduction in their hours
 - Exemptions added from PPPFA
 - **Maintain Records!!!**





Schedule C Filers and General Partners

- Waiting for guidance on impact of PPPFA
- Schedule C filers forgiveness with no other Payroll or Non-Payroll Costs – 8/52 of net income capped at \$100,000, or \$15,385
- General partners forgiveness capped at 2019 self employment earnings (Line 14a of K-1) times 92.35%
- Compensation can't exceed \$15,385
- Health insurance and retirement benefits are ignored for self-employed individuals and general partners



Documents to Substantiate Forgiveness

Payroll Costs

- Bank account statements or third-party payroll reports
- Tax forms – payroll tax filings (Form 941)
- State quarterly unemployment insurance tax filings
- Payment receipts, cancelled checks or account statements for health insurance and retirement contributions
- Support for FTEs during chosen reference period





Documents to Substantiate Forgiveness

Non-Payroll Costs

- Rent or lease payments
 - Current lease agreement and cancelled checks
 - Lessor account statements from February 2020 through one month after CP
- Utility payments
 - Invoices from February 2020 and during CP
 - Cancelled checks or account statements verifying payments
- Mortgage interest payments
 - Lender amortization schedule and cancelled checks verifying payments
 - Lender account statements from February 2020 through one month after CP





Other Documents to Maintain

- Support for employees in Salary/Hourly Wage Reduction calculation
- Support to verify employees making more than \$100,000
- Documentation regarding employee:
 - Job offers and refusals
 - Firings for cause
 - Voluntary resignations
 - Written employee requests for reductions in work schedule
- Other PPPFA exemptions
- Support for Safe Harbor requirements
- All records related to Borrower's PPP loan
- Keep all documentation for 6 years



Key Updates From the U.S. Treasury

- Interim Final Rules
- SBA Frequently Asked Questions (FAQs)
 - Guidance to address borrower and lender questions
 - Updated on a regular basis
 - Up to question number 48 as of June 1, 2020
- Internal Revenue Service





Key Updates From the U.S. Treasury – SBA FAQs

Good Faith Certification on Need

- Questions 31, 39 and 46 of FAQs
- The Act requires each applicant applying for a PPP loan to certify in good faith “that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing obligations” of the applicant
- If applicant cannot meet this certification, then funds should have been returned by May 18, 2020
- The Safe Harbor for loans under \$2 million is that there is now a presumption of necessity
- The Safe Harbor for loans over \$2 million is that, although you must establish necessity, if there is a finding by the SBA that the PPP loan wasn’t necessary:
 - the loan must be repaid without forgiveness, and
 - if paid after receiving notification from the SBA, no administrative enforcement or referral to other agencies will be made
- Presumably, this means there will be no criminal or civil penalties associated with the finding



Key Updates From the U.S. Treasury – Internal Revenue Service

- IRS Notice 2020-32
 - Released on April 30, 2020
 - Guidance on deductibility of expenses paid with PPP proceeds
 - Otherwise deductible expenses paid with PPP funds and forgiven are **Not Deductible** for Federal income tax purposes
 - Applied Section 265(a) of the Internal Revenue Code
 - Disallows deductions if amounts allocable to tax-exempt income



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Q&A



More to come...

Andrew Ross, CPA, CFE, CVA, CFS

Partner

Gettry Marcus CPA, P.C.

aross@gettrymarcus.com

Gabe H. Shurek, CPA/CFF, CFE, CVA

Partner

Gettry Marcus CPA, P.C.

gshurek@gettrymarcus.com



THANK YOU!!