

PPP Compliance Service Ready for a loan audit?

THE PAYCHECK PROTECTION PROGRAM.

Obtaining a government-backed loan requires playing by the government's rules. Unfortunately, the rules specific to PPP loans are extraordinarily complicated and unclear. Moreover, the rules continue to change and evolve. While many of the rules are intended to prevent or identify fraud, they can also be traps for the well intentioned. Given the unclear and still evolving nature of such rules, it is widely believed that a significant number of PPP borrowers have made or will make false or incorrect certifications to their lender or the SBA, misuse loan funds, or fail to comply with other requirements. Noncompliance can lead to civil and even criminal liability for borrowers and their principals. Further, even compliant borrowers face the risk of potentially costly and time-consuming audits.

PPP LOANS WILL BE REVIEWED OR AUDITED.

The PPP loan program was hastily launched with incomplete and ambiguous guidance and rules. Fearing that funds would quickly run out and faced with dire financial circumstances, many borrowers raced to obtain PPP funding without fully understanding the associated rules and requirements. Nevertheless, the federal government continues to indicate that it will aggressively review and pursue enforcement action against noncompliant borrowers. Indeed, federal authorities recently stepped up efforts to bring criminal charges against non-compliant borrowers, and in some instances, against accountants or other professionals involved in applying for loans. While not well-publicized, over one hundred million dollars has been allocated to governmental oversight of COVID-19 economic relief programs including the PPP loan program.

To clear up a common misconception, regardless of size, all loans are subject to review. Official SBA guidance states that the SBA "will review all loans in excess of \$2 million." Clearly, borrowers with such loans should expect, and should remain prepared for, an audit; however, Borrowers with smaller amounts should avoid being lulled into a false sense of security. The same guidance further provides that the SBA will audit smaller loans "as appropriate." In addition to random audit, the SBA and other agencies will use data analytics to review aggregated information submitted by (or available about) borrowers and identify red flags and target loans for review. Moreover, regardless of loan amount, each forgiveness application will be reviewed by a lender and, in many instances, the government as well. Further, under the False Claims Act, private citizens have the right to bring whistleblower actions on behalf of the government regarding a borrower's PPP loan. In fact, the False Claims Act creates a financial incentive for private citizens (including disgruntled employees) to do so. Lastly, as some notable businesses have already experienced, loans are subject to review in the court of public opinion. In July, the SBA began publically releasing certain information regarding loans of \$150,000 or

greater, including borrower names, addresses, and corresponding loan amount ranges. Additional information may become available to the public available via Freedom of Information Act requests or further SBA disclosures. Accordingly, the question is not *if* a loan will be scrutinized, but *when*.

START PREPARING TODAY.

A full SBA audit will likely be an independent review to verify compliance with program rules, including the following: 1) borrower eligibility; 2) calculation of loan amount; 3) compliant use of funds; and 4) calculation of forgiveness. Borrowers that fail an audit may be required to repay their loans, may jeopardize all or part of their loan forgiveness, and, worse, might face prosecutions by the U.S. Department of Justice. As referenced above, in some instances, liability may extend to principals of the borrower.

Preparing for an audit can be a difficult process; however, there are several steps a borrower can take now to support compliance and minimize the consequences or risk of an audit. There is no reason for a borrower to wait to be contacted by the government and then scramble to recall or recreate reliable, supporting information. In this challenging environment, achieving peace of mind is a function of obtaining sound advice from experts to understand program requirements as they apply to the specific business, complying with those requirements and being equipped to quickly answer auditor requests with reliable documents and information. With an enormous volume of PPP loans for the government to review, those borrowers who are prepared for an audit and can promptly return accurate and well-supported responses will be best situated to avoid further scrutiny and protracted review.

HOW WE CAN HELP.

Our PPP Audit Team is well-versed in this area and can help prepare the business for a review/audit and evaluate and ensure compliance through our PPP Compliance Service as highlighted by the steps below:



Gather all necessary information and review the application package.



Conduct a needs analysis based on information submitted, carefully considering the certifications in the application and the available guidance.



Collect and document the evidence and analysis that support certifications of need, eligibility and use of the funds; discuss potential audit questions and prepare answers.



Assess overall risks and identify any missing pieces; provide best practices to mitigate risk.



Deliver a customizable report (where desired), which can include a written summary of our analysis and conclusions and an organized portfolio of documents evidencing compliance in anticipation of likely auditor requests.



Represent and defend the borrower in the event of an audit or enforcement action.

We also advise clients regarding general program questions, use of funds, employment requirements, forgiveness applications, post-loan transactions or ownership changes, and new SBA loans.

Borrowers do not need to handle this alone. We continue to closely monitor the evolving guidance and related developments and remain ready to assist borrowers and their businesses. Please feel free to contact us with any questions.

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