



# **Prepare to Comply – How Preparing Today for Loan Forgiveness May Help You Tomorrow**

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Mr. Thompson joined Urban Edge Properties in July of 2015 as a member of the finance team, supporting the corporate accounting and SEC Reporting functions of the company. He transitioned to the asset management team in 2017 and develops financial analytical tools for the operations teams. Mr. Thompson graduated from Greensboro College with a Bachelor of Arts and holds a Master of Accountancy from the Owen School of Management at Vanderbilt University.

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With over 20 years of assurance and consulting experience, Bill serves clients in the government contracting, technology, construction & real estate, and professional services industries. He specializes in helping clients with complex valuation projects, financial disputes, accounting investigations, and financial due diligence.

# Disclaimer

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- This webinar and any potential future accompanying materials is designed to provide practical and useful information on the subject matter covered. It is presented with the understanding that it is to be utilized for informational purposes only and shall not constitute legal or other professional advice. The facts and opinion stated are that of the publisher and presenters and neither the publishers and presenters nor Urban Edge Properties are rendering legal, accounting or other professional services. Urban Edge shall not be responsible for the content of any materials and makes no representations as to the accuracy or applicability of such materials, nor shall Urban Edge be liable for damages arising from the use of or inability to use the information or materials or from any action or decision taken as a result of using these materials.

# PPP vs. EIDL

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## ■ Paycheck Protection Program

- Section 7(a) of the Small Business Act - 7(a) Business Loans
- Intended to promote growth of businesses (not disaster) - encourage small business growth and to assist small business
- Administered by SBA approved lenders
- Guaranteed by SBA

## ■ Economic Injury Disaster Loans

- Intended to assist small business with physical, economic, and other damages that arise as a result of a disaster such that such small businesses are placed in the same position as they would have been had the disaster not occurred
- Administered by SBA itself
- EIDL- to cover for substantial economic injury means that the business will be unable to meet its obligations as they become due

# EIDL

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- Apply on SBA website
- SBA will assign an inspector to review certain documents, including tax returns, insurance policies and governing documents
- Intent is to make the company whole due to injury
- SBA will make the determination as to how much you and there is no set formula (max of \$2M)
- Program is close to out of cash due to overwhelming demand. Loans limited to \$15,000 (pending any increase)
- Personal guarantees only required for loans over \$200,000 (this is a change)
- Ability to get \$10,000 grant upon submission of an application

# PPP Loan Eligibility

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- Small business concerns, other business concerns with under 500 employees
- General business loan eligibility standards (operating company, US business, exclusion of certain industries)
- Size is determined in the context of SBA affiliation rules
- Necessity of the loan- applicant must certify that the loan is “necessary to support ongoing operations as a result of current economic uncertainty”
  - Consider: impact of crisis on the business and projections; impact on workforce; how would the PPP loan mitigate those impacts or improve outcomes
- Why do we care?
  - False Claims Act/Fraud liability
    - Civil and criminal exposure
    - Treble damages
    - Individual liability



- Public scrutiny- Shake Shack example



# Necessity

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- How much scrutiny will this determination be given?
  - All loans over \$2M will be reviewed at the loan forgiveness stage
- Factors to consider:
  - Impact of crisis on projections/performance/revenues
  - Impact on workforce
  - **Access to other sources of liquidity**
    - Existing lines of credit
    - Potential investment from existing investors/owners
    - Other sources of liquidity should be accessed if it would not be significantly detrimental to the business
- There needs to be a good faith determination of need
- May be relevant not only as of the date of application for loan but also as of the date of application for loan forgiveness

# SBA Affiliation Rules

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- 121.301(f)(1) deals with minority SH controls over quorum and board actions. (No case law from 121.103 is instructive.)
- Stock options, convertible securities and agreements to merge (“present effect rule”)
- Common Management
- Identity of interest (for business loans, close relatives only)
- Totality of the circumstances

## SBA Affiliation Rules Cont.

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- Size is determined based on the *combined* employees of the applicant and of all the applicant's affiliates
- Mitigating negative control affiliation risks
  - May be amended/waived, so long as the waiver is irrevocable
- Remember- size and eligibility are determined and certified as of the date of the application
- CARES Act exemptions from affiliation

# PPP Maximum Loan Amount – Steps

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- Step 1: Compute 2019 payroll costs by adding the following:
  - 2019 adjusted gross wages\*
  - 2019 employer health insurance contributions
  - 2019 employer retirement contributions
  - 2019 employer state and local taxes assessed on employee compensation
- Step 2: Calculate average monthly payroll costs
- Step 3: Multiply average monthly payroll costs by 2.5
- Step 4: Adjust for outstanding EIDL loans, if applicable

\* Note: In arriving at adjusted gross wages the following should be subtracted: (i) any amounts paid to any individual employee in excess of \$100,000 and (ii) any amounts paid to any employee whose principal place of residence is outside the U.S.

# PPP Maximum Loan Amount – Illustration

Step 1	2019 reported gross wages	\$ 3,300,000
	Less: adjustment for \$100,000 cap	\$ (275,000)
	Less: adjustment for principal place of residence	\$ -
	2019 adjusted gross wages	\$ 3,025,000
	2019 ER health insurance contributions	\$ 150,000
	2019 ER retirement contributions	\$ 100,000
	2019 ER SUI	\$ 5,000
	2019 payroll costs	\$ 3,280,000
Step 2	Average monthly payroll costs	\$ 273,333
Step 3	Average monthly payroll costs times 2.5	\$ 683,333
Step 4	Adjustment for outstanding EIDL loans	\$ -
<b>Maximum loan amount</b>		<b>\$ 683,333</b>

# PPP Loan Forgiveness

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- Up to 100% of a PPP loan may be forgiven if required conditions are met
- Loan forgiveness is based on the borrower's forgivable costs paid over an eight-week period commencing on the date the lender makes the first disbursement to the borrower
- Forgivable costs include specified payroll and non-payroll costs
  - Payroll costs: gross salaries subject to \$100,000 annualized cap, employer health insurance contributions, employer retirement contributions, employer state and local taxes assessed on employee compensation
  - Non-payroll costs: rent, utilities, mortgage interest
- PPP loan forgiveness will not be treated as taxable income to borrowers ... but the associated forgivable costs will not be tax deductible

# Potential Limitations on Forgiveness

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- General requirement that 75% of loan proceeds be used for payroll costs
- Not more than 25% of loan forgiveness may be attributable to non-payroll costs
- PPP loan forgiveness may be reduced:
  - If employee headcount levels are not maintained (based on comparison of average number of FTEs per month for specified periods); or
  - To the extent individual salaries decrease by more than 25% during specified periods (applies only to employees compensated at an annualized rate of less than \$100,000)
  - But ... borrowers can restore any reduction in FTEs or salaries that occurred between 2/15/20 and 4/26/20 if they do it by 6/30/20

# Selected Unknowns

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- Application of 75% rule
- Sequencing of forgiveness reduction calculations
- Calculation of full-time equivalents
- Details around June 30 restoration provision
- Eligible debt obligations for forgivable interest costs
- Payments during 8-week period vs. costs incurred during 8-week period



# Recordkeeping Considerations

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- Keep PPP loan proceeds segregated
- Track the usage of PPP loan proceeds carefully
- Plan out the 8-week period
- Maintain appropriate supporting documentation

# Supporting Documentation

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- Payroll costs
  - Tax returns
  - IRS Forms 941, W-3, state income and unemployment tax returns
  - Master payroll report or equivalent
  - Documentation showing total costs for employer-paid health care benefits and employer-paid retirement plan funding costs
- Non-payroll costs
  - Account statements and canceled checks
  - Invoices and receipts
  - Other documentation of payment

# Top Takeaways

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- Be mindful of required good faith certifications
- Official detailed guidance on forgiveness is forthcoming
- Carefully track the usage of PPP loan proceeds and maintain appropriate documentation

# Contact Us

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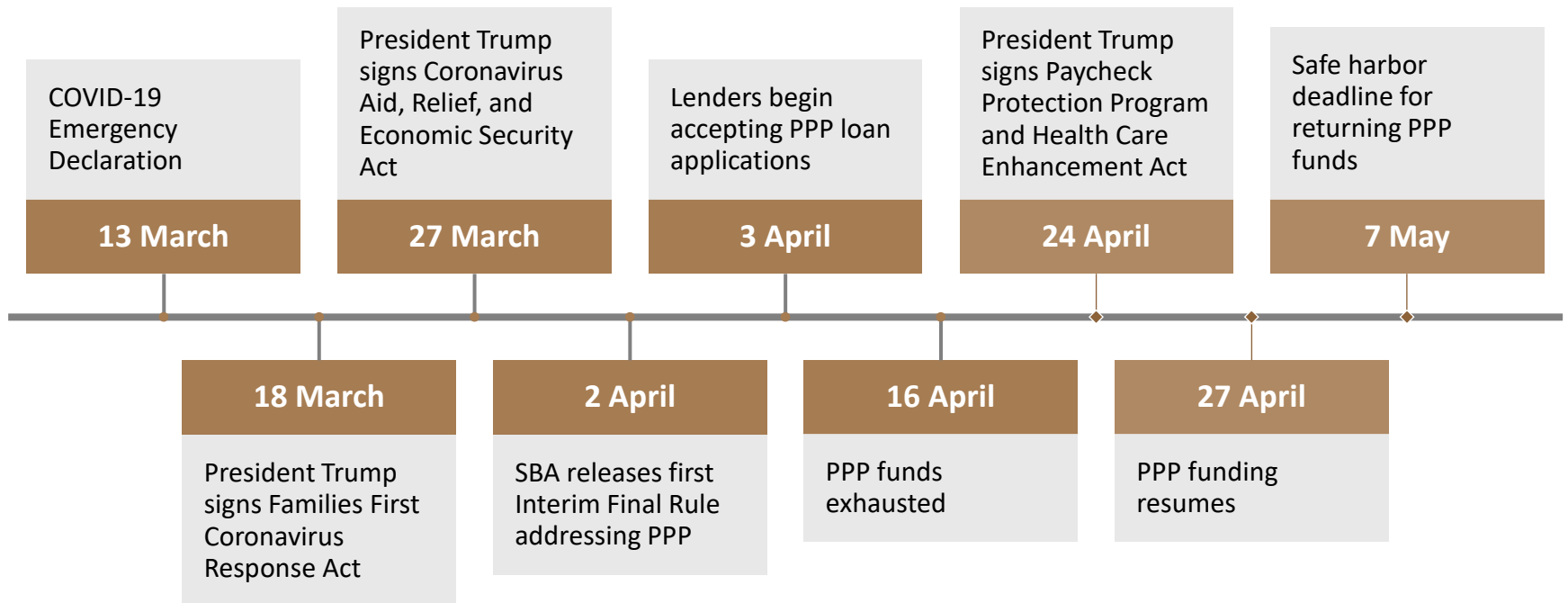
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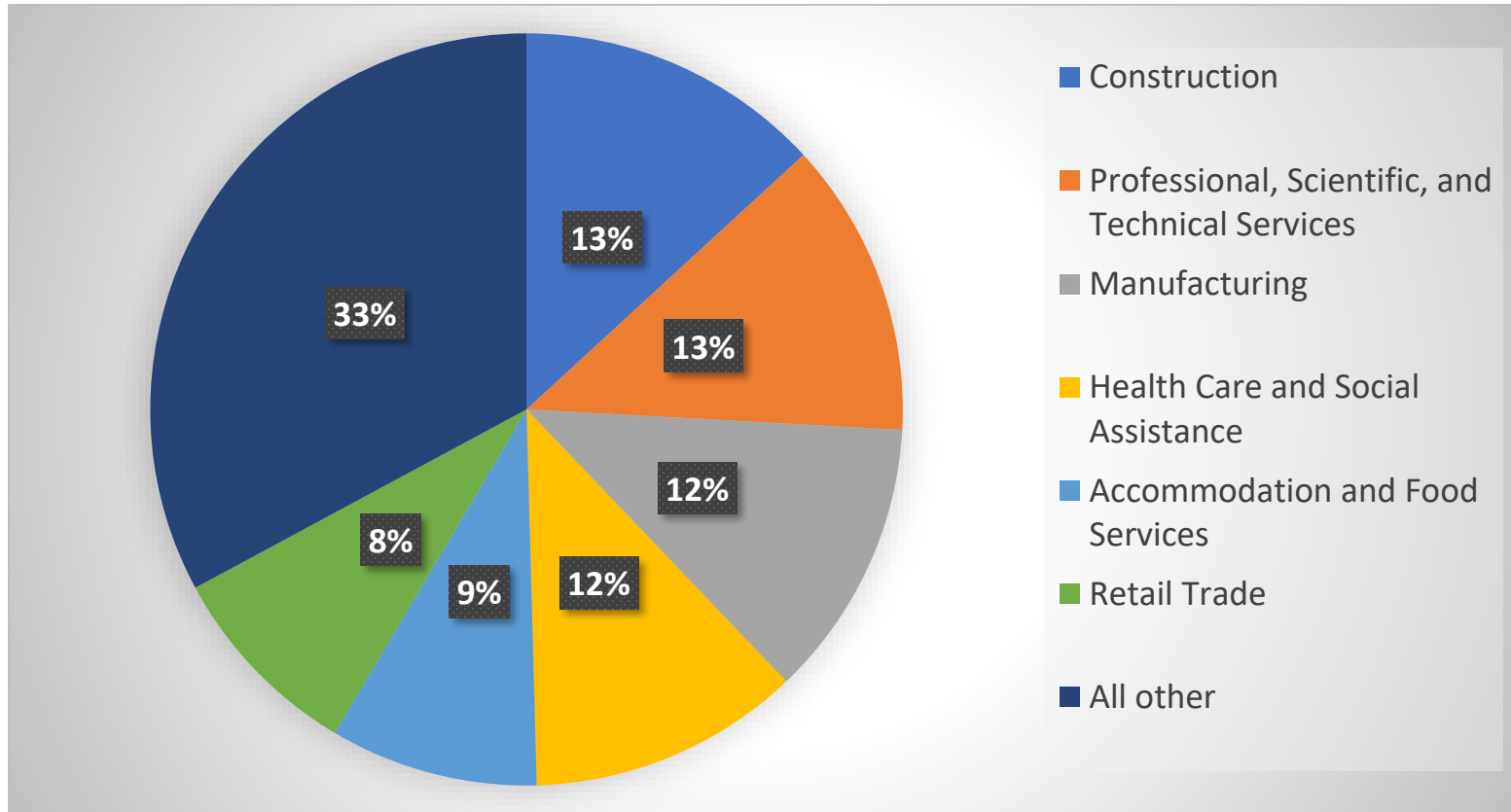
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# Appendix I: PPP Notable Dates



# Appendix II: PPP Round 1 – Funding by Industry



Source of data: Small Business Administration (data as of April 16, 2020).