

The CAA, PPP Loans, and Nonprofits: What's New and What's Next

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Agenda

- Size and scope of current PPP loan program
- First Draw PPP Loans
- Second Draw PPP Loans
 - Eligibility
- Update on PPP loan forgiveness

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Size and Scope of Current PPP Loan Program

- The 2021 Consolidated Appropriations Act authorized an additional \$284.45 billion in PPP loan funding
- The PPP loan program is extended to **March 31, 2021**
 - This period includes both First Draw PPP Loans and Second Draw PPP Loans
- Organizations that did not receive a PPP loan during 2020 can apply for a **First Draw PPP Loan**

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Size and Scope of Current PPP Loan Program (cont.)

- Organizations that received a First Draw PPP Loan and meet other eligibility requirements can apply for a **Second Draw PPP Loan**
 - Only organizations that received a First Draw PPP Loan can apply for a Second Draw PPP Loan
 - Recipients of a First Draw PPP Loan must have used those funds on or before the date the Second Draw PPP Loan is disbursed

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Size and Scope of Current PPP Loan Program (cont.)

- The provisions are found in the section of the Consolidated Appropriations Act entitled the “Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act” (commonly referred to as the **Economic Aid Act**)

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PPP Loans and Employee Retention Credit

- The CARES Act did not permit an employer to obtain a PPP loan and receive the Employee Retention Credit
- The Consolidated Appropriations Act retroactively repealed this prohibition to the enactment of the CARES Act
- Wages used for PPP loan forgiveness cannot also be used for the Employee Retention Credit
- We are still waiting for guidance on how to claim the credit for wages paid during 2020

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SBA Actions to Date

- The SBA has:
 - Consolidated all prior First Draw Loan guidance into a new [Interim Final Rule on Paycheck Protection Program as Amended by Economic Aid Act](#)
 - Issued a new [Interim Final Rule on Second Draw Loans](#)
 - Consolidated its PPP loan forgiveness guidance into a new [Interim Final Rule on Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act](#)

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SBA Actions to Date (cont.)

- The SBA has published two new loan applications:
 - [SBA Form 2483 – PPP Borrower Application Form \(rev. 01/08/2021\)](#)
 - [SBA Form 2483-SD – PPP Second Draw Borrower Application Form](#)
- New guidance on computing maximum loan amounts and required documentation
 - [First Draw PPP Loans](#)
 - [Second Draw PPP Loans](#)

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SBA Actions to Date (cont.)

- The SBA has published three new loan forgiveness applications. Each can be used for First and Second Draw PPP Loans:
 - [Form 3508S](#) – For PPP loans of \$150,000 or less
 - Replaces prior version of the form, which only applied to loans of \$50,000 or less
 - May be used for 2020 loans of \$150,000 or less for which forgiveness has not been received
 - [Form 3508EZ](#) – EZ Loan Forgiveness App. (rev. 1/19/21)
 - [Form 3508](#) – Loan Forgiveness App. (rev. 1/19/21)

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SBA Actions to Date (cont.)

- The SBA has consolidated its prior loan forgiveness Interim Final Rules into a new [Consolidated Interim Final Rule on Loan Forgiveness Requirements](#)
- The [PPP Loan FAQs](#) and [PPP Loan Forgiveness FAQs](#) are still published, but updates to reflect the Consolidated Appropriations Act changes are pending

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1st & 2nd Draw PPP Loans: Exempt Org Types

- Tax-exempt organizations described in section 501(c)(3)
- Tax-exempt organizations described in section 501(c)(6)
 - No more than 15% of receipts from lobbying activities
 - Lobbying activities do not comprise more than 15% of the organization's total activities
 - Cost of lobbying activities did not exceed \$1 million for most recent tax year that ended before 02/15/2020
 - Do not employ more than **300 employees**

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1st & 2nd Draw PPP Loans: Date of Existence

- Must have been in operation on February 15, 2020
- Seasonal businesses that were dormant on February 15, 2020 are nonetheless eligible
 - A business (or nonprofit) in operation for **any 12-week period** between February 15, 2019 and February 15, 2020 is deemed to have been in operation on February 15, 2020

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1st & 2nd Draw PPP Loans: Headcount

Headcount	
First Draw	Second Draw
500 employees	300 employees

- In general, nonprofit organizations are limited to these employee headcounts, but in limited circumstances an [alternate employee size standard](#) is permitted
- Special “per location” rules apply to news organizations
- [PPP Loan FAQ 36](#). The CARES Act specified that the employee headcount includes “individuals employed on full-time, part-time, or other basis.”

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1st & 2nd Draw PPP Loans: Headcount (cont.)

- [IFR § III.B.4.k](#) Student workers count **unless** their services are performed as part of a Federal Work-Study Program or a substantially similar state program
- How is the number of employees computed? [13 C.F.R. § 121.106](#)
 - “The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon **numbers of employees for each of the pay periods** for the preceding completed 12 calendar months.”
- There is **no full-time equivalency** calculation

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1st & 2nd Draw PPP Loans: Headcount (cont.)

- Employees of foreign affiliates count
- [IFR § III.B.3.c.](#) The affiliation rules that require aggregation of employees of affiliates do not apply to faith-based organizations where application of the affiliation rules would substantially burden those organizations’ religious exercise
 - Thus each organization measures its own headcount without combining it with other affiliated organizations

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1st & 2nd Draw PPP Loans: Necessity Certification

- Borrowers must continue to certify that:
 - “Current economic uncertainty makes this loan request necessary to support the ongoing operations of the recipient.”
- The SBA has stated that:
 - “[A]ny PPP loan borrower, together with its affiliates, that received PPP loans with an original amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.”
- This certification is still required for Second Draw PPP Loans
 - Query whether the \$2 million “good faith” threshold will change?

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2nd Draw PPP Loans Only: Revenue Reduction

- Bottom line: Compare the gross receipts received in each calendar quarter of 2020 to the gross receipts received in the comparable quarter of 2019
 - If one quarter (and only one) shows at least a 25% reduction, this test is met
- There are special rules for organizations that were not in operation for all of 2019
- Any amount of First Draw PPP Loan forgiveness received is **excluded** from gross receipts

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2nd Draw PPP Loans Only: Revenue Reduc. (cont.)

- For exempt organizations, gross receipts are gross receipts within the meaning of IRC § 6033
 - This is further defined in Treas. Reg. § 1.6033-2(g)(4)
- For organizations that file Form 990, the [Second Draw PPP Loans](#) guidance states that this computation is made by:
 - Starting with Form 990, Part VIII, Line 12, column (A) (this is total revenue) and then
 - Adding back Lines 6b(i), 6b(ii), 7b(i), 7b(ii), 8b, 9b, and 10b
 - Organizations that file Form 990-EZ use a the same concept with Part I, Lines 9, 5b, 6c, and 7b

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2nd Draw PPP Loans Only: Revenue Reduc. (cont.)

- Organizations that don't file Form 990 should compute gross receipts as though they would file Form 990
- SBA has adopted a rule that for organizations in operation for all of 2019, they can choose to compare their annual gross receipts between 2019 and 2020 and if there was an overall drop of 25% or more, then they are eligible

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2nd Draw PPP Loans Only: Connections to PRC

- Organizations with certain connections to the People's Republic of China (PRC) are ineligible, including:
 - An entity in which 20% or more of the economic interest is owned or held by an entity
 - created in or organized under the laws of or that has significant operations in the PRC or the Special Administrative Region of Hong Kong
 - An entity that retains, as a member of the board of directors of the business concern, a person who is a resident of the PRC

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2nd Draw PPP Loans Only: Required Documentation

- Organizations borrowing more than \$150,000 are required to supply documentation supporting:
 - At least a 25% reduction in gross receipts between a 2020 reference quarter and the comparable quarter in 2019
 - Internal financial statements, bank statements, or tax returns
 - The computation of the loan amount, including:
 - Forms 941, state quarterly unemployment insurance tax forms, or equivalent payroll processor records
 - Evidence of any retirement and employee group health, life, disability, vision, and dental insurance contributions

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2nd Draw PPP Loans Only: Required Documentation (cont.)

- Documentation required of organizations borrowing more than \$150,000 (continued):
 - The number full-time equivalent employees on the borrower's payroll and the dollar amount of eligible expenses for the covered period

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2nd Draw PPP Loans Only: Required Documentation (cont.)

- Organizations borrowing \$150,000 are not required to supply the documentation supporting their revenue reduction at the time they apply for a Second Draw PPP Loan
 - But must provide this documentation at the time they apply for PPP loan forgiveness or, if they do not apply for forgiveness, upon request by the SBA

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1st & 2nd Draw PPP Loans: Max Loan Amount

Maximum Loan Amount	
First Draw	Second Draw
Smaller of <ul style="list-style-type: none">• \$10,000,000, and• 2.5 times average monthly payroll	Smaller of <ul style="list-style-type: none">• \$2,000,000, and• 2.5 times average monthly payroll
	<ul style="list-style-type: none">• 3.5 times average monthly payroll for Hotel and Restaurant entities with NAICS code 72

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1st & 2nd Draw PPP Loans: Max Loan Amt. (cont.)

- Average monthly payroll costs can be determined using:
 - Calendar 2019
 - Calendar 2020
 - The 12 months immediately prior to applying for a loan

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1st & 2nd Draw PPP Loans: Max Loan Amt. (cont.)

- Payroll costs include:
 - Salary, wage, commission, or similar compensation
 - Includes minister's housing allowance, [PPP Loan FAQ 32](#)
 - Payment of cash tips or equivalent
 - Payment for vacation, parental, family, medical, or sick leave
 - Allowance for dismissal or separation
 - Payment of any retirement benefit
 - Payment of state or local tax assessed on the compensation of employees

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1st & 2nd Draw PPP Loans: Max Loan Amt. (cont.)

- Payroll costs include:
 - Payment required for the provisions of group health care, or **group life, disability, vision, or dental insurance benefits**, including insurance premiums
 - Group life, disability, vision, or dental insurance benefits retroactive to March 27, 2020
 - This means they are includible in loan forgiveness payroll costs of any PPP loan

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1st & 2nd Draw PPP Loans: Max Loan Amt. (cont.)

- Payroll costs **do not** include:
 - Amounts paid to independent contractors (independent contractors can apply separately for a PPP loan)
 - Compensation of an individual employee in excess of \$100,000 as prorated for the covered period
 - Taxes imposed or withheld under FICA/Medicare, RRTA, FIT (but note in [PPP Loan FAQ 16](#), the SBA made clear it is only the employer portion of FICA/Medicare that is excluded)

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1st & 2nd Draw PPP Loans: Max Loan Amt. (cont.)

- Payroll costs **do not** include:
 - Compensation of an employee whose principal residence is outside the U.S.
 - Treas. Reg. § 1.121-1(b)(2) contains factors that may be used to determine an individual's principal place of residence, [PPP Loan FAQ 33](#)
 - Qualified sick leave wages for which a credit is allowed under the Families First Coronavirus Response Act (FFCRA)
 - Qualified family leave wages for which a credit is allowed under the FFCRA

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1st & 2nd Draw PPP Loans: Max Loan Amt. (cont.)

- Example 1
 - 2019 annual gross payroll shown on Forms 941, line 5c is \$1,650,000
 - Two U.S. resident employees are ministers whose combined salaries (not shown on Form 941, line 5c) total \$190,000 and whose ministerial housing allowance (also not shown on Form 941, line 5c) totals \$60,000
 - Three U.S. resident employees were paid more than \$100,000 in 2019 in salary, wages, and bonuses. Their aggregate pay in excess of \$100,000 totals \$250,000.

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1st & 2nd Draw PPP Loans: Max Loan Amt. (cont.)

- Example 1 (continued)
 - The total payroll of two employees whose primary residence is outside the U.S. is \$150,000
 - Total **employer** cost of group health, dental, vision, life, and disability insurance for U.S. resident employees is \$75,000
 - Employer retirement plan contributions for U.S. resident employees totaled \$50,000
 - The employer is a reimbursing employer and does not pay state unemployment tax
 - No EIDL loan was received between 01/01/20 and 04/03/20

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1st & 2nd Draw PPP Loans: Max Loan Amt. (cont.)

- Example 1 (continued)

Gross payroll	\$1,650,000
Add: Ministers' salary	190,000
Add: Ministers' housing allowance	60,000
Add: Benefits cost	75,000
Add: Retirement plan contributions	50,000
Less: Compensation in excess of \$100K	(250,000)
Less: Compensation of non-resident employees	<u>(150,000)</u>
Total includible payroll	\$1,625,000
Divided by 12	\$135,417
Times 2.5 = Maximum loan amount	<u>\$338,542</u>

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1st & 2nd Draw PPP Loans: Max Loan Amt. (cont.)

- Seasonal employers

- Defined (borrowed from FLSA regulations):
 - Doesn't operate for more than 7 months in any calendar year, **or**
 - During the preceding calendar year it had gross receipts for any 6 months of that year that were not more than 33.33% of the gross receipts of the other 6 months
- Determine the average total monthly payments for any continuous 12-week period between February 15, 2019 and February 15, 2020
 - Multiply the result by 2.5

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1st & 2nd Draw PPP Loans: Loan Terms

Maturity	
First Draw	Second Draw
<ul style="list-style-type: none"> • 2 years for loans made before June 5, 2020 <ul style="list-style-type: none"> ❖ Borrowers and lenders can negotiate a longer term, up to five years • 5 years for loans made on or after June 5, 2020 	5 years

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1st & 2nd Draw PPP Loans: Loan Interest/Deferral

Interest	
First Draw	Second Draw
1%	1%

Deferral	
First Draw	Second Draw
<ul style="list-style-type: none"> • Complete deferral of principal and interest until loan forgiveness determination is made <ul style="list-style-type: none"> ❖ However, loan payments must begin if a loan forgiveness application is not filed within 10 months of the end of the loan forgiveness covered period 	<ul style="list-style-type: none"> • Complete deferral of principal and interest until loan forgiveness determination is made <ul style="list-style-type: none"> ❖ However, loan payments must begin if a loan forgiveness application is not filed within 10 months of the end of the loan forgiveness covered period

1st & 2nd Draw PPP Loans: Use of Funds

- 60% of loan funds must be used on payroll costs
- As before, PPP loan funds may be used for mortgage interest, rent, and various utilities
- Now, in addition, PPP loan funds may be used for:
 - Covered operations expenditures
 - Covered property damage costs
 - Covered supplier costs
 - Covered worker protection expenditures
 - These four new items can be used on a loan forgiveness application for a 2020 First Draw PPP Loan unless the SBA has already remitted a loan forgiveness payment to the lender

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PPP Loan Forgiveness

- Most significant changes:
 - Streamlined loan forgiveness process for First Draw and Second Draw PPP Loans less than or equal to \$150,000
 - Revised Form 3508S is now only one page
 - No documentation is required to be submitted with the loan forgiveness application
 - But the borrower must retain employment records that prove compliance with the PPP loan requirements for 4 years and other relevant records for 3 years
 - For loans in excess of \$150,000, the document retention period is 6 years

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PPP Loan Forgiveness (cont.)

- Most significant changes (continued):
 - Revised Form 3508S (continued)
 - Only requires the borrower to:
 - List the number of employees at the time of loan application and at the time of the loan forgiveness application
 - Estimate the amount spent on payroll costs
 - Provide the total loan amount
 - Certify the PPP loan funds were used for permissible uses, including the amount that must be used for payroll costs
 - Certify the calculation and documentation of the revenue reduction requirement for Second Draw PPP loans

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PPP Loan Forgiveness (cont.)

- Most significant changes (continued):
 - Payroll costs now include group life and disability
 - Dental and vision were previously included by SBA rule, now included by statute
 - Forgivable costs now also include:
 - Covered operations expenditures
 - Covered property damage costs
 - Covered supplier costs
 - Covered worker protection expenditures

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PPP Loan Forgiveness (cont.)

- Most significant changes (continued):
 - Loan forgiveness covered period now defined to:
 - Begin on the date of the first PPP loan disbursement, and
 - End on any date the borrower selects between the end of the 8th week after the loan disburses and the end of the 24th week after the loan disburses
 - The Alternative Payroll Covered Period has been eliminated

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PPP Loan Forgiveness (cont.)

- Most significant changes (continued):
 - Creation of the Business Activity Safe Harbor
 - This safe harbor to the FTE Reduction Quotient was created by the PPP Flexibility Act enacted on June 5, 2020
 - Borrower must be able to document an inability to return to its February 15, 2020 level of business activity, due to compliance with requirements established or guidance issued by HHS, the CDC, or OSHA during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19

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PPP Loan Forgiveness (cont.)

- Most significant changes (continued):
 - Creation of the Business Activity Safe Harbor (continued)
 - Open questions:
 - How is level of business activity measured? Documented?
 - How is the link to compliance with government requirements and guidance established?
 - If this safe harbor applies, there is no requirement to track FTEs

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PPP Loan Forgiveness (cont.)

- Most significant changes (continued):
 - Exception to compliance with respect to the FTE Reduction Quotient or Salary/Wage Reduction Amount
 - Organizations that borrowed \$50,000 or less are exempt from the FTE Reduction Quotient or Salary/Wage Reduction Amount
 - Changes in FTE Reduction Quotient Safe Harbor
 - For First Draw or Second Draw PPP Loans disbursed after December 27, 2020, an FTE reduction must be restored by the last day of the loan forgiveness covered period to avoid a reduction

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PPP Loan Forgiveness (cont.)

- Most significant changes (continued):
 - EIDL Advance deduction requirement repealed
 - SBA has issued [specific guidance](#) on this point
 - As of January 8, 2021, the SBA's Forgiveness Platform was updated to no longer reduce PPP loan forgiveness by the amount of an EIDL Advance
 - Where the SBA has forgiven a PPP loan and reduced the loan forgiveness amount by an EIDL Advance, the SBA will automatically remit a reconciling payment to the lender
 - The lender is responsible for notifying the borrower that it has received the reconciliation payment

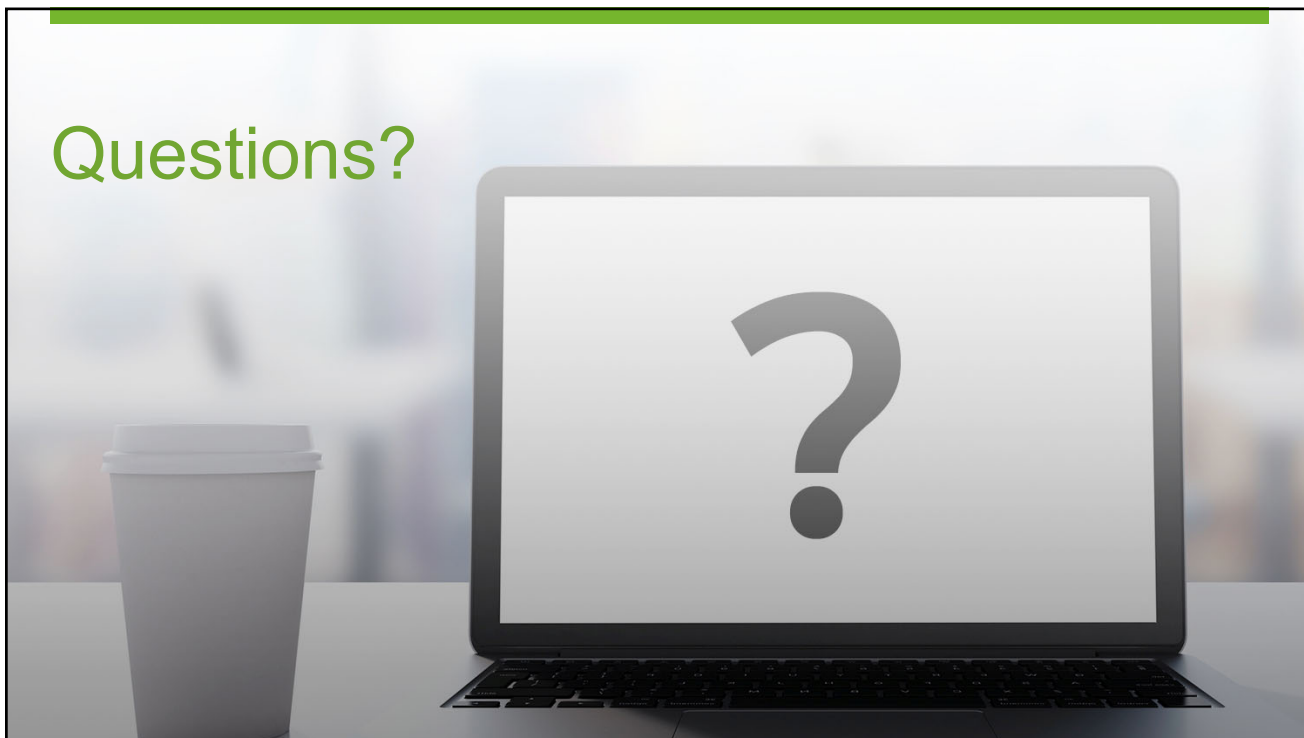
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Loan Necessity Questionnaire

- No change to the Loan Necessity Questionnaire process
 - This questionnaire is issued to First Draw PPP Loan borrowers with loans in excess of \$2 million

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Questions?



Thank you.

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