### When CHCs with Paycheck Protection Loans over $2 million should apply for loan forgiveness.

### *As of March 12, 2021*

In early January, I recommended that CHCs who had received a Paycheck Protection Program loans of more than $2 million delay applying for forgiveness, and reevaluate the situation in early March.  In short, **there is not a cut-and-dry answer, so each CHC will need to weigh the various factors to determine whether they are comfortable continuing to wait to apply.**

**Background:** In late 2020, there was significant concern and uncertainty about how the Small Business Administration (SBA) would determine if PPP loans over $2 million would be forgiven; these concerns centered around SBA [Form 3510, the Loan Necessity Questionnaire](https://www.sba.gov/sites/default/files/2020-12/SBA%20Form%203510%20--%20PPP%20Loan%20Necessity%20Questionnaire%20%28Non-Profit%20Borrowers%29-508_0.pdf), which all PPP borrowers who received more than $2 million must submit as part of their loan forgiveness application.

The CARES Act, which created the PPP, stated that a loan should be forgiven if (among other requirements) the borrower made a “good faith certification” of need for the loan *at the time of the loan application.* However, Form 3510 focuses heavily on information that borrowers could not possibly have known at the time they applied for PPP funding -- such as total revenues in the second quarter of 2020, and how much the borrower ultimately received from other CARES Act sources. The form also strictly limited how much narrative information an applicant could provide, denying them the ability to explain why they viewed a PPP loan as necessary at the time they applied for it. Finally, the SBA provided no explanation about how the information from Form 3510 would be used, raising concerns that borrowers could be denied loan forgiveness based on information they could not have known at the time they applied for a loan.

Many groups expressed significant concerns about Form 3510, and the implication that borrowers could be denied forgiveness due to factors they could not have foreseen at the time of application. At least one group sued the SBA over it. In response, the SBA:

* Issued an FAQ – see #53 [here](https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf) -- indicating that:
  + Factors that occurred after the borrower applied for the loan will only be one of several factors that the SBA will consider when determining whether to forgive a loan.
  + If SBA question the necessity of a loan, the borrowers will be permitted to provide a narrative and documents to support their “good faith certification”.
* [Solicited public comment on whether to revise the form](https://www.federalregister.gov/documents/2021/01/04/2020-29012/information-collection-available-for-public-comment-paycheck-protection-program). The comment deadline closed March 5.

**Factors to Consider:** Given this situation, there is no cut-and-dry answer for when CHCs with PPP loans over $2 million should apply for forgiveness. In making a decision, these CHCs should consider the following factors:

* It appears that few borrowers with PPP loans over $2 million have applied for forgiveness yet. Therefore, there’s no good anecdotal information on how SBA uses the information in the Form 3510.
* It’s too soon to know if or how the SBA will revise the Form 3510 in response to the public comments. However, [FAQ #53](https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf) suggests that SBA realizes they could face legal challenges if they deny forgiveness based on factors a borrower couldn’t have known at the time of application.
* To avoid having to make any payments on your PPP loan, you must apply for forgiveness by 10 months after the last day of your “covered period”. However, you can apply for forgiveness any time until the loan’s maturity date, and if you receive 100% forgiveness, you will likely be reimbursed for any payments you made.

**Conclusion:** Given this, some CHCs may choose to start the loan forgiveness process now, while others may choose to wait until closer to 10 months after the end of their covered period, to see whether SBA changes Form 3510 and to hear about other applicants’ experiences. I will continue to provide updates on this issue as they arise.