



Practical Tips for Tribal Organization Access to the SBA Paycheck Protection Program ("PPP")

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Even with news that the initial appropriation for the Paycheck Protection Program ("PPP"), an extension of the Small Business Administration's 7(a) loan program, has been fully allocated, there are many strategies tribal organizations need to put in place to ensure that the full benefits of the program are realized. Putting these few practical tips to work – even midway through the PPP process – will give tribal business a better chance of having pending applications accepted and funded, the maximum amount of loan forgiveness achieved later this year, and any new applications accepted with the next Congressional appropriation are quickly funded.

Initial applications for these loans – up to \$10 million in debt that may be largely forgivable – have been heavy, and banks are reporting overwhelming demand and challenging delays in pushing out loan funding. With the promise of more funding (perhaps more than another \$200 billion) for this program looming first on Congress' agenda over the next few weeks – even tribal organizations that have not fully explored the PPP program should consider these practical business insider tips to prepare for success:

Understand that there is minimal bank underwriting. The model loan application, the interim program rule, and other SBA guidance documents make abundantly clear that banks are "held harmless" for the vast majority of decisions on PPP loans. Information requested on the application is minimal and the list of items that must be submitted as supporting documentation is modest (and limited to relevant payroll, benefit, rent, and utility cost information). This was a policy choice by legislators and rule makers to facilitate the fast deployment of funds under the program. The implication of light underwriting, however, is that the normal "give and take" process with loan officers to ensure the application is well-balanced and complete is not really happening. The burden on the banks right now is to loan money fast.

Be aware of the heavy borrower burden to "certify" data and key eligibility criteria. The burden of accurate information and fulsome disclosures is entirely on tribal organizations. Tribal officials or business leaders signing the loan application should personally review the certifications required before submitting the loan (they are on the application) and should not be afraid to question staff or legal counsel on implications in detail. In a time of crisis, there is not much emphasis on the future oversight, investigation, and enforcement matters that can arise when agencies do an after-the-fact "government accountability" examination of the program. Given that many tribal organizations and Alaska Native Corporations depend on health relationships with the SBA, great care should be exercised that your application does not subject you to unwanted future scrutiny.

Engage early with key contacts at your primary bank. Banks are under water with demand for funds under the PPP right now. There are numerous reports that banks are sending small business clients with multiple banking relationships (accounts and/or bank branded credit cards in more than one place) away, claiming another institution is their "primary bank" for application purposes. A key to any tribal organization's success in a PPP application is to have person-to-person contact with your banking relationship manager or the designated PPP coordinator. The application is online and completed

through a bank portal. Getting questions resolved and placing your organization on the radar of the PPP loan staff can ensure fewer delays and a smoother application process.

Accurate record keeping of use of funds is critical. One of the most attractive features of the PPP program is that the loan can be largely, if not entirely, forgiven. The banks will be backstopped by funds appropriated to the SBA and by a facility recently approved the Federal Reserve. Whether your loan is fully forgiven depends on your accurate record keeping and timely submission to the bank later this summer. The burdens of weathering this pandemic are significant enough that achieving maximum loan forgiveness could be make-or-break for some tribal organization budgets.

Public disclosure implications. Please be aware that submissions made to any government program under the CARES Act may be discoverable by third parties through the Freedom of Information Act ("FOIA"). While it is unlikely that any proprietary data on payroll or employees (with privacy concerns) would be released, information about the officers of the business, what it does, and how much its loan was will likely be released from SBA files if a proper FOIA request is submitted in the future.

Traditional SBA eligible business rules apply. With the exception of non-profit businesses (which are now eligible), all of the businesses listed in the SBA rules (at 13 CFR 120.110) are still ineligible for SBA business loans. Please consult these rules and your legal counsel to assess whether you are eligible for a PPP loan under these rules.

For additional information

Van Ness Feldman is closely monitoring [COVID-19](#) related stimulus issues and is in a strong position to provide expert analysis and advice to tribal entities trying to navigate this ever-changing landscape. If you would like more information about ways in which we can support your Tribe's businesses and programs, please contact [Ed Gehres](#) or [Maranda Compton](#), or any member of the firm's [Native Affairs](#) practice at (202) 298-1800.

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