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What you Need to Know about the PPP Loan

May 14, 2020

Questions You Might Have?

- I have received a PPP Loan – what types of expenses can I use the funds to pay?
- How can I document the use of my PPP Loan in order to get my loan forgiven?
- What are the loan forgiveness requirements?

Paycheck Protection Program

- Provides cash-flow assistance through 100% federally guaranteed loans to employers who maintain their payroll that may be forgiven in part or entirely
- \$659 billion in total funding
- As of May 6th \$532 billion in loans approved
- Maximum loan of \$10 million
- Forgiveness of up to 8 weeks of payroll-related costs based on employee retention and salary levels
- Two year term; 1% interest; payments deferred for 6 months

Make Sure Your Business Truly Qualifies for PPP Funding

- The intent of Congress and the Trump Administration was twofold:
 1. Give small business the funding necessary to survive the Coronavirus shutdown for an estimated 2 months. That is why the loan amount was based on 2.5 times your average monthly payroll
 2. Keep workers employed and on payrolls instead of sending them to the unemployment line
- In the first wave of funding, 245 public companies applied for and received \$905 million in funds - LA Lakers, Shake Shack, Sweetgreen, Harvard University, and many restaurant and hotel chains
- In a CNBC interview on April 28th, Secretary Mnuchin issued a stern warning directed at large companies, many of whom are public, that have substantial market value and access to capital markets; it was not directed at small, independently owned companies
- He stated that companies who borrowed more than \$2 million would be subject to audit by the SBA and Treasury
- According to a CNBC report yesterday, of the \$1.32 billion tapped by public companies across 407 loans, only 61 loans totaling \$411 million are being returned

Make Sure Your Business Truly Qualifies for PPP Funding - continued

- Besides meeting the definition of small business, review the required certification in the application - that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant”
- While the “good faith” standard needs further clarification, the fact remains that the government instituted the shutdown that every American Business had to abide by;
- The forced closure of our economy made the future uncertain; and
- Even if your business had other sources of capital like a line of credit, it will be extremely difficult for your bank or the government to determine under these circumstances that the average business was not acting in “good faith”
- It would probably be a good idea to document the state of your business when you applied for the PPP loan
- If you are concerned/unsure as to whether you qualify for the PPP funding, you may return the funds by May 14, with no questions asked

Use of Loan Proceeds

The CARES Act specifies that starting on the date a business receives PPP loan funding, it has 56 days to use at least 75% of the money for payroll expense

For employers, this means:

- Pay your employees at current salary levels without reductions in wages or headcount, or
- Rehire employees you furloughed or laid off and pay them the same wages they earned in prior weeks
- If you pay yourself, the amount is limited to 8 weeks' worth of the amount you made in 2019 not to exceed \$15,385
- For independent contractors be prepared to show proof that you were in operation as of 2/15/20 and provide documentation of how you earned wages

Use of Loan Proceeds - continued

You should use all the loan proceeds during the 8-week period following your loan on:

- Payroll costs (max \$15,385 per individual), plus health and retirement benefits and unemployment taxes;
- Interest on mortgage obligations, in force before 2/15/20;
- Rent, under lease agreements in force before 2/15/20;and
- Utilities, for which service began before 2/15/20
- Unclear on timing of eligible nonpayroll expense - i.e. if you pay rent on May 1 but didn't receive your loan until May 4 can you count that rent payment as an eligible expense?
 - The safest thing to do might be to not count any payments made prior to receiving PPP funds

Documentation

- A clear paper trail is imperative – you might consider opening a separate bank account to track incoming and outgoing activity
- Keep detailed records and hold onto the documentation in case you are audited – the SBA has not announced when the audit period is
- You will need documentation verifying the number of full-time equivalent employees on payroll and their pay rates
- Payment verification for mortgage obligations, lease and utility payments such as bills and canceled checks
- You may need to provide mortgage loan documents and or lease agreements
- You will be required to certify that documentation is true and correct
- Other related paperwork and lender requests

Loan Forgiveness Rules

- Your lender has to make the decision on your forgiveness application within 60 days, so the more complete the application the better
- Loan Forgiveness Rules as of 4/17/20 state the loan will be forgiven as long as:
 - Expenses are shown and supported on the borrowing entity's records and tax returns
 - The loan proceeds are used to cover eligible expenses over the 8-week period after the loan is funded
 - Employee staffing levels and compensation levels are maintained
 - Payroll costs per individual capped at \$100,000 annualized
 - At least 75% of the proceeds used for payroll costs
 - No more than 25% used for mortgage interest, rent and utilities

Loan Forgiveness Rules - continued

- If you use less than 75% of the funds for qualified payroll expenses, then the difference will be subject to repayment
 - For example – if you only use 70% of your loan for payroll expenses, 25% for rent, mortgage interest and utilities and 5% for supplies you will have to pay back the 5% with 1% interest
- If you received an Economic Injury Disaster Loan, the amount forgiven on the PPP could be reduced by the amount granted by the Emergency Economic Injury Grant (up to \$10,000)

Frequently Asked Questions about PPP

- **Does my business have to qualify as a small business as defined in Section 3 of the Small Business Act, 15 U.S.C.632 in order to participate in the PPP?**
 - No. In addition to the small business concerns defined in section 3, a business is eligible for the PPP loan if the business has 500 or fewer employees whose principal place of residence is in the U.S.
- **The CARES Act excludes from the definition of payroll costs any employee compensation in excess of annual salary of \$100,000. Does the exclusion apply to all employee benefits?**
 - No. The exclusion does not apply to non-cash benefits such as employer contributions to retirement plans, group health benefits and state and local unemployment taxes
- **The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over and 8-week period; when does the 8-week period begin?**
 - The 8-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower

Frequently Asked Questions about PPP - continued

- **If I laid off workers, do I need to rehire the same employees?**
 - Your bank will not check to see if you hired the same employees back – just make sure that your payroll amount is the same or greater than your 2019 average
- **When do I have to start tracking the use of PPP Funds**
 - Start tracking the use of funds upon receipt and extend out 8 weeks in order for loans to be forgiven
 - You cannot sit on the money – don't wait until you reopen or have further certainty about the shutdown.
- **Will SBA review individual PPP loan files?**
 - To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application

Frequently Asked Questions about PPP - continued

- **When can I apply for forgiveness?**
 - Most lenders will begin processing forgiveness applications at 7 weeks from fund disbursement. Reach out to your banker now to confirm this and to check on required documentation
- **What is my liability exposure around the loans and forgiveness?**
 - No substantive information in regard to fines or penalties. In the PPP FAQs, the SBA points back to the certification on the application that states “current economic uncertainty makes the loan request necessary to support the ongoing operations of the Applicant”. If your intentions were honest, the reality of lost sales/income and the uncertainty about the length of the shutdown should suffice to show “good faith”. Contact your banker if you have concerns as he/she will be making the decision on forgiveness

Resources

- **Frequently Asked Questions for Lenders and Borrowers for the PPP:**
 - <https://www.sba.gov/document/support--faq-lenders-borrowers>
- **CNBC interview with Secretary Mnuchin – April 28th:**
 - CNBC.com: <https://www.cnbc.com/video/2020/04/28/watch-cnbc-full-interview-with-treasury-secretary-steven-mnuchin.html>.
- **Loan Forgiveness Under the PPP:**
 - <https://www.forbes.com>

QUESTIONS??

