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CLIENT ALERT BUSINESS/CORPORATE/TAX

FAQs About Paycheck Protection Program Forgivable Loans

Michael G. Trachtman, Esquire

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Updates to Original Answers in **Bold**

Q: Who is entitled to obtain a Paycheck Protection Program ("PPP") forgivable loan?

A: Virtually all businesses with fewer than 500 employees are eligible, including for-profit businesses, non-profit organizations, certain self-employed individuals, independent contractors, and sole proprietorships.

Pending further regulations, there is no requirement that you demonstrate to your lender that you can repay the loan – the federal government has guaranteed repayment. All you need to do is document that you have been operating and paying payroll since at least February 15, 2020, that you need the loan to keep your business open, that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments, and that you have not applied for or received a similar SBA loan.

Q: How can I apply for the PPP loan?

A: You can apply for PPP loans through your Small Business Administration ("SBA") lender. You can access **an updated copy of the application form here.** Individual lenders may also require that you complete additional forms. There is a substantial demand for these loans, and it can be expected that lenders will process applications from existing customers before processing other applications. **For financial and logistical reasons, many of the "big banks" have questioned the extent to which they wish to become involved in the PPP loans, and are only accepting applications from existing borrowers - having an account at the bank or, even, a line of credit is not enough. How this will play out over time remains to be seen. Anecdotally, borrowers are having an easier time dealing with smaller banks.** Note that the Program runs through June 30, 2020.

Q: How much will I be able to borrow?

A: You can borrow up to 2.5 times your "average monthly payroll," based on your prior 12 months of operations. For this purpose, "payroll" is broadly defined, and includes salary, wages, commissions, tips, employee benefits (vacation, paid leave, health insurance, retirement benefits), and state and local taxes assessed on compensation. Loans are capped at $10,000,000.

In calculating your average monthly payroll, you can include up to $100,000 of compensation for each employee, but what non-salary benefits must be included within that cap and what non-salary benefits you can include in excess of the cap is not clear, pending the publication of further regulations. Until that happens, borrowers interested in maximizing the amount of their loan should work with their lender, whose responsibility it is to review and approve the average monthly payroll calculation.

There has been some confusion about whether borrowers could include independent contractors in addition to employees in the calculation of "average monthly payroll" – the key figure in determining how much you can borrow. The Treasury Department has now stated (albeit with some continuing ambiguity) that independent contractors are not to be included in the calculation. How lenders will deal with situations in which borrowers incorporate payments made to 1099 workers remains to be seen.

Q: How much of my loan will be forgiven?

A: The portion of the loan that you use to pay the following expenses, during the eight-week period after you get the loan, will be forgiven, up to a maximum of the principal amount borrowed. (However, the amount of the forgiveness can be reduced if you cut staff or reduce salaries after you get the loan. See the next FAQ for details.)

1. Payroll costs (up to $100,000/employee per year, annualized, or $8,333 per employee per month) including the following:

    i. Salary or wages;

    ii. Tips, commissions, and similar compensation;

    iii. Paid leave (vacation, parental, family, medical and sick leave);

    iv. Severance and separation pay;

    v. Group health care benefits and premiums;

    vi. Retirement benefits; or

    vii. State and local taxes on employee compensation);

2. Rent or interest on a mortgage;

3. Utility bills.

You will have to submit documents showing the payments you made, such as canceled checks, payroll reports, account transcripts, etc. You will also have to certify that your information is correct and that the loan was used to retain employees and make the claimed payments. The lender must make the forgiveness decision within 60 days of your application. Expect further regulations and guidance to define the exact procedures and requirements.

Q: Is the loan forgiveness reduced if I lay off employees or reduce their wages?

A: Loan forgiveness can be reduced by two things – the reduction in the number of your full-time employees (FTEs) or the reduction in any employee's pay by more than 25%. Here is how we think this will work, pending further regulations and guidance from the government.

- Loan forgiveness will be reduced by the (a) average number of FTEs during the 8-week period after you get the loan, divided by (b) either (your choice) the average number of FTE employed by you from February 15, 2019 through June 30, 2019, **or** January 1, 2020 through February 29, 2020;
- Loan forgiveness will also be reduced by the reduction of total salary or wages of any employee in excess of 25% of the employees' salary or wages in the last full quarter in which they were employed before the 8-week period after you obtain the loan. Employees who make more than $100,000 annually are excluded from this calculation.

But there is an "out." Workforce or salary reductions made between February 15, 2020 and April 26, 2020 will be disregarded if those reductions are eliminated by June 30, 2020.

Q: Is the loan forgiveness taxable income?

A: No.

Q: Suppose not all of the loan is forgiven? What are the terms for the portion of the loan I have to repay?

A: The terms of the loans are very favorable. You will not be required to provide personal guaranties or collateral. **The loans will bear interest at a maximum rate of 1% (increased from the original .5%), no prepayment penalty, with a 2-year maturity (decreased from the 10-year term originally advertised).** Lenders are required to defer payments for at least 6 months, and as long as 12 months, although interest will accrue during this period.

Q: Can I get a PPP loan, and an Economic Injury Disaster Loan as well?

A: Yes, you can get both loans, but you must use the loans for different purposes.

Q: Can I use a PPP loan to refinance an existing Economic Injury Disaster Loan or other SBA loan?

A: In many cases, yes. Check with your lender.

Q: When will I receive the loan proceeds?

A: It is anticipated that it will take banks at least one week to verify the information required to determine the amount of the loan and eligibility for the loan. According to government officials, borrowers will be able to access funds on the day the loan is approved.

Q: What sort of things could disqualify me?

A: Various disqualifying factors are listed on the application, such as whether your business or any of its owners were previously excluded from federal loan programs or are presently involved in any bankruptcy, if you ever had an SBA loan that is delinquent or resulted in a default, and if any 20% owner is currently subject to criminal charges or has previously been convicted for a crime against a minor.

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The Wisler Pearlstine team of business attorneys is ready to address your COVID-19 questions and concerns. Please contact any of us at 610.825.8400 you have concerns about the impact of COVID-19 in the workplace.

This article represents our best effort to assemble accurate information on an accelerated basis. However, the subject is complex, and many details have been summarized or omitted in the interest of focusing on key points. In addition, the law and the guidance issued by the government is constantly changing. You should not rely on the accuracy or completeness of this information for your business and personal decisions but, rather, should seek updated, personalized legal advice as needed.

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