April 17, 2020

You Received a Paycheck Protection Program Loan, What's Next?

The Paycheck Protection Program (PPP) was a central part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law on March 27, 2020. The CARES Act set aside $349 billion for borrowers to obtain loans from U.S. Small Business Administration (SBA) approved lenders. The primary goal of the PPP was to help small businesses during the COVID-19 outbreak by enabling them to retain workers during the spread of this pandemic. As we previously outlined in our general business FAQs an in other updates available at our Cares Act Resource Page, there are several complex questions to consider when taking advantage of federal program.

Banks began accepting PPP applications on April 3, and needless to say, there has been a lot of chaos and confusion for both banks and businesses. Banks are managing the flurry of applications and navigating the everchanging guidance, and there is still additional guidance to come related to how the banks will process PPP loan forgiveness. Additionally, although the SBA has reached its $349 billion limit for the PPP program, more funding is anticipated; however, exact details have yet to be determined or announced. This leaves most businesses with several open questions.
Ultimately, businesses whose loan requests were approved are in a great position, as a successful distribution of funds under the PPP means employers can put their team back to work. However, that benefit is accompanied by uncertainty as to appropriate next steps. Here is our list of important recommendations and considerations as you begin to deploy PPP funds.

1. Maintain proper documentation and records.

Borrowers should first ensure that proper corporate approval documentation is in place. A borrower's governance documentations and other debt obligations in place prior to the loan disbursement should be reviewed to prevent any conflicts or roadblocks to fully utilizing PPP loan proceeds.

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Keep track of all expenditures. The CARES Act requires borrowers to document how disbursed funds are being used. Borrowers must provide records verifying the number of employees and their pay rates, along with records proving the amount spent on eligible debt interest, mortgage interest, leases, and utility obligations.

2. Ensure that PPP funds are used in a manner that complies with the CARES Act.

Acceptable uses of loan disbursements include: payroll costs, mortgage interest incurred prior to February 15, 2020, rent payments on leases dated prior to February 15, 2020, utility payments made pursuant to service agreement dated prior to February 15, 2020, interest on debt obligations that existed prior to February 15, 2020, and any uses permitted for general 7(a) loans.

It is important that borrowers thoroughly understand the limitations placed on the aforementioned categories. For example, PPP loans can only be used up to $100,000 annually in compensation per employee. Additionally, at least 75% of the loan proceeds must be spent on payroll costs.

Any use of funds knowingly made for unauthorized purposes may be considered fraud and exposes the borrower to the risk of being charged with a federal crime. Furthermore, any unauthorized use of funds may have negative tax implications for the borrower, may expose the borrower's shareholders, members, or partners to personal liability for unpaid loans, and will eliminate the ability to obtain loan forgiveness.

3. Manage EIDL and PPP Loans appropriately.

An important thing to note is that while a borrower may obtain relief through both PPP loans and the Economic Injury Disaster Loan (EIDL) program, funds from both loans cannot be used for the same purposes. Furthermore, EIDL loans cannot be combined with PPP loans; that is, any EIDL loan amounts must be declared when applying for the PPP and will be subtracted from the PPP loan forgiveness amount.

4. Ensure that the loan amount for which forgiveness is requested is maximized.

It is highly recommended that borrowers utilize the assistance of a tax professional in navigating the PPP loan forgiveness program to ensure they are maximizing the forgivable amount. Given the fact that the Department of Treasury and the SBA are issuing ongoing guidance regarding the forgiveness program, it is critical for borrowers to stay informed of such matters.

Probably two of the most important issues to keep in mind are the forgiveness time period and the forgiveness limitation provisions. The forgiveness time period – the time during which eligible expenses are measured for maximum forgiveness purposes - begins upon disbursement of the loan and ends eight weeks later. The forgiveness only applies to payroll costs, mortgage interest, rent, and utilities incurred and paid during that period. The amount of forgiveness is also reduced based on certain reductions in the number of full-time equivalent employees and reductions in wages or salary. We are expecting more guidance on these provisions, but the clear intent is to incentivize rehiring or non-firing of employees – both immediately upon receipt of the loan (to maintain sufficiently high payroll costs) and before June 30, 2020 (to avoid a large penalty reduction in the amount otherwise forgivable).

It is important to note that while many states defer to the federal rules regarding whether or not any loan forgiveness amount is excluded from a taxpayer's income, this is not automatically the case. All borrowers should consult their tax professionals to understand the tax implications at the state level.

5. Request loan forgiveness in a timely manner.

Eight weeks after the first loan disbursement is made to the borrower, the borrower must file an application with its respective bank to request loan forgiveness. A certification that the amount for which forgiveness is requested was used for must be submitted along with the application.

6. Find more tax saving avenues available through the CARES Act.

The CARES Act affords multiple opportunities for general corporate tax breaks in addition to the PPP loan program. Among these provisions are: (i) the expanded ability to deduct net operating losses beyond what the Tax Cuts and Jobs Act of 2017 originally allowed, (ii) the loosening of restrictions on excess-loss deductions, (iii) the ability to deduct additional business interest expenses, (iv) the ability for corporations to use alternative minimum tax credits for as early as the 2018 tax year, and (v) the ability of certain alcohol producers and hand sanitizer manufacturers to avoid federal excise taxes.

What next?

Make sure to check in with your lender frequently to ensure that you are providing all of the required documentation for the PPP loan forgiveness. Additional regulations and guidance related to PPP loan forgiveness and the CARES Act will be forthcoming in this evolving landscape. While this update is provided based on current information, we encourage you reach out to a member of our team to make sure you follow the most recent guidance.

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