

You Got Your PPP Loan, Now What?

Alert

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Needless to say, the last few weeks have been utterly chaotic for employers. Aside from dealing with the existential threat of a 100-year pandemic and the confusion around the Families First Coronavirus Response Act, small businesses are trying to understand the 800+ page, \$2.3 trillion CARES Act—which includes the Paycheck Protection Program (PPP).

For businesses that have successfully navigated the PPP loan application race and received news from their lender that their loan was approved, the reward is the loan proceeds. However, with this reward comes tremendous uncertainty on what happens next. Loan recipients will have to pivot their concerns from maximizing their PPP loan amount to maximizing PPP loan forgiveness.

In seeking PPP loan forgiveness, though, businesses are confronted with the threat of criminal penalties for misrepresentation and false certifications under the Small Business Act. Compliance measures must be implemented now—before funds are received or disbursed—as loan proceeds must be used within eight weeks of receiving the loan. In addition, good practices and procedures will help businesses streamline their application process for PPP loan forgiveness.

As an initial matter, small business loan recipients must be cognizant of the PPP provisions that can reduce the amount of forgiveness. In particular:

- If you spend less than 75% of the loan on payroll costs
- Reduction of FTE employees compared to the base period
- Reduction of employee salary or wages to less than 75% of the base salary or wages of such employee during the prior quarter

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The following is a checklist of best practices and considerations we recommend businesses follow with regard to PPP loans:

PRE-FUNDING CONSIDERATIONS

- Consider asking your lender to time the origination of the loan to help you best maximize your ability to spend funds on payroll. Currently, SBA rules require lenders to fund the loan within 10 days after approval.
- Consider whether rehiring is needed or feasible to maximize loan forgiveness. You can pay people, even if they are not working, to maximize loan forgiveness.
- Determine your FTEs for the applicable test period, which is February 15, 2019 through June 30, 2019 or (unless you are a seasonal employer) January 1, 2020 through February 29, 2020.
- Determine the total base salary or wages of each employee for the last full quarter before the date you receive your loan.

POST-CLOSING FUNDS DISBURSEMENT

Once you receive the loan, keep PPP loan proceeds in a separate bank account to avoid co-mingling with other funds. This helps track exactly how funds are used.

- The “covered period” for purposes of loan forgiveness is the eight-week period beginning on the date of origination of the loan. If you want the entire loan amount forgiven, the entire amount must be spent during the “covered period.” Remember, though, you do not have to struggle to make the loan forgivable. If you cannot spend the money in the eight-week period, you have up to two years to repay the loan, at 1% interest, with a six-month payment deferral.

POST-CLOSING PAYROLL AND EXPENSES

- Align with your payroll provider to make sure they do not automatically debit from your non-PPP loan account. If you are supplementing payroll costs from a separate account, make sure your payroll provider has complete instructions and follows them.
- Make sure you spend at least 75% of the loan proceeds on “payroll costs.” Failure to do so will affect your loan forgiveness.
- PPP loan proceeds can only be used up to the pro-rata equivalent of \$100,000 annually in compensation. Any compensation beyond this amount is not eligible for PPP funds and is not forgivable.
- Use funds only for eligible payroll costs and other authorized expenses under CARES, such as rent, mortgage interest or utilities (max of 25% of loan). Keep cost invoices matched up with records of such payments from the PPP account in a separate PPP file.

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- Do not use PPP funds for paying paid leave benefits under the Families First Coronavirus Response Act.
- Keep track of the FTE average that you will need to meet to maximize forgiveness. FTEs are compared to the test period described above.
- Constantly track your FTE monthly average during the eight week "covered period" as you will generally need to meet your average for the applicable test period described above to maximize loan forgiveness.
- Review compensation for employees to ensure that you do not reduce their pay beyond 25% of the base amount described above, as doing so reduces eligibility for loan forgiveness.
- PPP funds can be used towards severance payments, so think about opportunities to help problematic employees transition (however, be cognizant on how that will affect your FTE count).

EXHAUSTION OF FUNDS

- Assemble your records showing how funds were spent, as they are being spent.
- Complete your application for forgiveness and submit to your lender.
- If the full loan amount is not forgiven, decide whether to pay off the balance immediately or pay the loan off over the two-year maturity.

ONGOING CONSIDERATIONS

- Check in with your lender on a regular basis to confirm the type and form of the loan forgiveness application and any additional guidance on what they will require for documentation.
- Continue to monitor the SBA's website for updates on loan forgiveness and interim rules on how this will be calculated.

CARES and the PPP continue to be an ever-changing landscape, often with apparent contradictions between the language of the CARES Act and the SBA's or Treasury Department's interpretations of it. This alert is current as of the information available, but we strongly suggest you reach out to us for the most up-to-date guidance.

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