PAYROLL PROTECTION PROGRAM

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Payroll Protection Program ("PPP"): The Basics

What is it?

- The Paycheck Protection Program provides small businesses with funds to pay up to 8 weeks of payroll costs including benefits after the loan is made.
- Govt. funding up to $349B and likely more.
- Funds can also be used to pay interest on mortgages, rent, and utilities (75% must be payroll costs.)
- Loan can be forgiven (more on that later)
- Loans can be made up to June 30, 2020 (unless extended)

Who Qualifies?

- Businesses that have 500 or fewer employees
  - All employees count including foreign and employees of affiliated companies
  - The calculation is based on the trailing twelve months average prior to the loan application.
  - Includes 501C(3) nonprofits
  - Excluded businesses – banks, private clubs, life insurance companies, some passive businesses, foreign businesses
- Restaurants, foodservice businesses, caterers and hotels regardless of the number of employees
  - Must operate under the 72 NAICS Code (Accommodation and Food Services)
- The business qualifies as a SBA employee-based or revenue based size standard corresponding to its primary industry
- The business qualifies as a small business concern subject to the SBA's alternative size standard subject to maximum tangible net worth of $15M and the average taxable income for the two fiscal years before the application is less than $5M.

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How Much Can I Borrow?

Up to $10MM, capped at the lesser of:

- $10MM
- or
- 2.5 times average monthly "payroll cost" incurred in the one-year period before the date of the loan (or prior calendar year) is made plus outstanding balance on Economic Injury Disaster Loan made from 1/31/20 through date the PPP loan is made can be refinanced via the PPP.
- If a business was not in existence during the 2019 period you can use 2.5 times the average monthly payroll between January 1,2020 and February 29, 2020. Seasonal businesses can use the average monthly payroll costs for the period between February 15, 2019 or March 1, 2019 and June 20, 2019

What are the terms?

- 1.0% fixed rate
- Payments are deferred for 6 months; interest does accrue over this period
- Loan is due in 2 years; no prepayment penalty or fee if repay the loan early

Payroll Costs Defined

What is Included in “Payroll Cost”?

- Salary, wages, commissions
- Guaranteed payments to partners or allocated partnership income
- Payment of cash tip or equivalent (i.e., tips reported for W-2 purposes)
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of State or local tax assessed on the compensation of employees
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at $100,000 on an annualized basis for each employee.

What is Not Included in “Payroll Cost”

- Salary, wages, commissions and tips in excess of an annual salary of $100,000, prorated as necessary
- Guaranteed payments and individual partnership allocations in excess of $100,000
- Compensation to employees residing outside of the United States
- Certain taxes withheld during the period February 15, 2020 – June 30, 2020
- Qualified Sick Leave wages for which a FFCRA credit is claimed
- Qualified Family Leave Wages for which a FFCRA credit is claimed

Forgiveness

Can My Loan Be Forgiven?

Loans will be forgiven as long as the loan proceeds are used to cover the following costs over the 8-week period after the loan is made:

- Payroll Costs (must be 75% of covered costs)
- Interest payments on mortgages
- Rent
- Utilities
- AND
- Employee and compensation levels are maintained (see next slide)

How do I apply for Loan Forgiveness?

- Submit a request to the lender that is servicing the loan at the end of the 8 week period.
- Provide documents that verify:
  - the number of full-time equivalent employees and pay rates and
  - the payments on eligible mortgage, lease, and utility obligations
- You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.

Forgiveness

The PPP is an Incentive to Not Reduce Workforce:

- 75% of the PPP loan proceeds must be used during the 8-week period for payroll costs.
- The remainder of the loan can be used for mortgage interest (previous loans), rent (previous leases) and utilities.

Forgiveness amounts will be reduced for any employee cuts or reduction in wages using a pro-rata formula

Number of Staff:

- Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- FTE = 30 hours

Level of Payroll:

- Your loan forgiveness will also be reduced if you decrease total salaries and wages by more than 25% for any employee that made less than $100,000 annualized in 2019 (can be new employees.)

Exception for Re-Hiring

You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

Amounts of Forgiveness do not constitute taxable income. As of now, it appears that all expenses paid are deductible but that may change.

VIEWS FROM LENDERS

- **Banks are desperately trying to process application. Bank officers have been pulled in to process the applications and get them into the SBA system.**

- **Even though the loans are likely forgivable, banks still must prepare some level of credit approval and due diligence on documents provided. Banks are responsible for validating loan amounts.**

- **Banks receive a 1% processing fee (5% for smaller loans) and interest at 1% during the life of the loan. These loans are burdensome on lenders who have all hands on deck. Their interest is in servicing their clients during their greatest needs and ensuring their continuity.**

- **The bankers I spoke with prohibit taking loan applications from third parties. They are not aware of any payments to agents.**

- **The loan application is relatively straightforward, but banks have to review them thoroughly before submitting to the SBA. This is to ensure that they will be paid from the government. Little things such as not initializing boxes delay the processing of applications.**

- **EIDL loans are available as well as PPP loans (applicants can receive both.) Bankers are not seeing a large increase in EDL loans.**

- **Bankers are prioritizing their own customers. Depending on the bank, customers with only a depository relationship may not qualify.**

Certifications for SBA Loans

Borrowers must include a Good-Faith Certification stating the following

- Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
- Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments. The applicant understands that if the funds are use for unauthorized purposes, the federal government may pursue criminal fraud charges.
- Documentation verifying the number of FTEs on payroll and the total payroll and covered mortgage interest, rent and utilities for the eight week period following the loan will be provided.
- From February 15, 2020 until December 31, 2020, the applicant has not received another loan under this program.

Potential for Abuse of the Program

Most subjective borrower requirement is:

"THE LOAN IS NEEDED TO <u>CONTINUE OPERATIONS</u> DURING THE COVID-19 EMERGENCY"

The overriding purpose of the 7A program is to keep small businesses alive and their workforce in place and employed until the Covid-19 crisis wanes. It will do so by helping thousands of businesses pay certain expenses and keep employees on the payroll during this emergency situation. The hope is they will continue as viable entities going forward

There is potential for rampant abuse. For example, some well capitalized applicants may "certify" that they deserve Federal help under this program due to losing customers, laying off employees, taking a significant hit to the bottom line, etc., yet their operations would have "continued" and survived without SBA help. Should they qualify for a loan?

Hopefully additional underwriting guidance will be issued soon by the SBA….

Appendix:

Paycheck Protection Program Loan Application