5 THINGS PPP BORROWERS NEED TO DO NOW

For small and midsize businesses struggling because of the coronavirus, the Paycheck Protection Program (PPP), included as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, provided much-needed funding to cover necessary expenses. One of the chief benefits of the loans made through this program is the potential for the loans to be completely forgiven if borrowers meet certain criteria.

The **Paycheck Protection Plan Flexibility Act of 2020**, enacted on June 5, further enhances the opportunity for loan forgiveness by expanding requirements on how the loans are spent and extending the period to use the funds to 24 weeks, with the ability to elect the 8-week period if funds were received prior to June 5, 2020.

Borrowers of PPP loans should consider taking the following steps to maximize the amount and accelerate the timing of loan forgiveness:

1. Decide how much time you need to spend the funds

One of the key provisions in the Paycheck Protection Program Flexibility Act is more time to use PPP funds. In the CARES Act, employers were limited to only an 8-week period to use the funds, but now they have up to 24 weeks, provided the covered period does not extend beyond Dec. 31, 2020. When choosing the covered period for the loan, borrowers should consider the changes that apply to both the 8- and 24- week periods and the benefits of each:

- The extended 24-week period will allow businesses to incur more eligible payroll costs. Many businesses were struggling to meet this minimum during the 8-week period, typically because of reduced staffing levels.
- Additionally, more funds spent on non-payroll costs are now eligible for forgiveness under both the 8- and 24-week period. Only 60% of the loan must be spent on payroll costs to achieve the maximum forgiveness, (lowered from the original 75% minimum). This change alone will allow many borrowers to achieve 100% forgiveness in the allowable 8-week period.
- The ability to count more weeks of payroll costs will reduce the need to spend funds on non-payroll costs and ultimately reduce the documentation borrowers need to provide to their banks.
- Businesses that choose the 8-week period will likely want to apply for forgiveness as soon as possible so they can make business decisions, such as any necessary payroll or staffing cuts, without impacting loan forgiveness.

2. Talk to your lenders

Regardless of the covered period a borrower chooses, it is critical to begin conversations about loan forgiveness procedures with lenders as soon as possible, particularly since lenders will be making the initial review before it goes to the Small Business Administration (SBA) for final approval. Borrowers should get clarity from their lender on the forgiveness process, including:

- Will applications be accepted on the SBA's paper forms or will an online submission be required?
- Is the lender requiring borrowers to submit documentation via email, an online portal, or in some other way?
- What formats are acceptable when submitting supporting documentation?
- Will the lender provide a calculator that borrowers can use to analyze their expenditures and project the expected forgiveness amount?

3. Get your FTE counts and salary reduction amounts in order

Borrowers of PPP funds need to compile several counts of their full-time equivalent (FTEs) employees. This includes historical FTE counts that are not dependent on the covered period of the loan, and can thus be calculated and documented at any time, including before a loan is awarded. These historical FTE counts will be compared to a borrower's average FTE count for the covered period.

Businesses will need to wait until their covered period ends to finalize their FTE determination for that time. Projection of the average number of FTEs for the covered period is useful for analysis purposes, but may be a difficult task for businesses like restaurants that are likely uncertain about when they can put employees back to work. However, a new safe harbor has been added that will take into account situations where compliance with COVID-19 precautions prevented business from reaching their average pre-COVID FTE count. Additionally, employers now have more time to reduce or eliminate their calculated FTE reduction by re-hiring laid off employees by the earlier of the loan forgiveness application date or December 31, 2020, instead of June 30, 2020.

If borrowers reduced employees' hourly rates or annual salaries during the covered period, they must document that the reduction did not exceed 25% of the wages/salary of the quarter preceding the loan date. If borrowers did not reduce the rate of pay, they do not need to perform this calculation, even if payments to employees decreased due to reduced hours. Reductions in wage payments due to reduced hours are not a part of this calculation because the reduced hours generate a reduction in the number of FTEs.

Any reduction in pay rates or salaries that exceeds 25% will be treated as a decrease of the amount spent on expenses eligible for forgiveness. However, the 24-week covered period allows more time to recover from temporary wage or salary reductions. For example, if a full time employee's hourly rate was reduced from $20/hour in Q1 to $10/hour for an 8-week covered period, the reduction at the end of the 8 weeks in excess of 25% would be $5/hour, which for a typical 40-hour work week would equate to $1,600. But, if the business restores the wage rate to $20/hour for weeks 9-24, the new average rate for the covered period is over $15/hour, meaning the pay reduction does not exceed 25%, preventing any adjustment on account of wage and salary reduction.

4. Gather your documentation to submit to your lender

In addition to FTE counts, borrowers will need to supply supporting documentation for any other expenses that are being submitted on the loan forgiveness application. This includes payroll registers and payroll tax reports that provide cash payroll paid during the covered period and the first payroll paid after the covered period, if this includes pay for days worked during the covered period. Your payroll vendor may have reports designed specifically to document PPP loan forgiveness amounts.

If additional payroll costs are needed to achieve 100% forgiveness, borrowers must include the receipts showing payment of health insurance premiums or claims paid for self-insured plans. If the entire loan proceeds are not accounted for with these documented payroll costs, then borrows should submit documentation showing the payment of non-payroll costs. Larger expenses like rent and interest on mortgages might achieve total forgiveness, eliminating the need for any additional documentation. If there are remaining funds that have not yet been documented as forgivable, then borrowers should continue to submit utility payments.

To minimize the back and forth with lenders, borrows should confirm if they need document submitted in a specific format.

5. Don't forget about documents you need to maintain, but not submit to the lender

In addition to the documents that must be submitted with the application for forgiveness to the bank, borrowers must maintain certain additional documentation for six years after the date the loan is forgiven or repaid in full. This is required should the SBA choose to audit the loan forgiveness. These documents include:

- PPP Schedule A Worksheet or its equivalent and documentation supporting:
    i. The listing of cash paid to each employee who worked during the covered period, including the "Salary/Hourly Wage Reduction" calculation, if necessary.
    ii. Which employees received compensation at an annualized rate of more than $100,000 during any single pay period in 2019.
    iii. FTE calculations for each employee including written offers of reemployments, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule.
    iv. FTE Reduction Safe Harbor calculations if applied to cure an FTE shortfall.
    v. Written explanation regarding the inability to return to pre-COVID-19 operation levels due to compliance with COVID-19 guidelines.

- Identity of owner-employees and self-employed owners and how their maximum loan forgiveness was determined.
- Copies of all records relating to the borrower's PPP loan, including:
  i. Documentation submitted with the PPP loan application and documentation supporting the borrower's certification as to the necessity of the loan request and its eligibility for a PPP loan.
  ii. Documentation necessary to support the borrower's loan forgiveness application, and documentation demonstrating the borrower's compliance with PPP loan requirements.

PPP loans provide many businesses with a critical influx of cash needed to survive the ongoing pandemic, and recent changes to the loan program have increased flexibility for borrowers. However, loan forgiveness is a key element in maximizing the benefit of this loan program. Approved borrowers should act quickly to ensure their ability to have these loans forgiven.

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