Small Business Administration Loan Opportunities

Thursday, April 30, 2020
OUR PRESENTERS

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WEBINAR DETAILS

• Webinar will be recorded
• All attendees will be placed on mute
• Questions may be input into the Questions Box within the GOTOWEBINAR

• SHRM Certified Course*
The information presented today is provided for educational purposes and should not be considered legal advice.
Small Business Administration
Loan Opportunities Update
1. Payroll Network Reminders

2. Breakdown of New PPP Guidelines
   • Who is Eligible
   • Other Borrower Requirements
   • Maturity

3. Maximizing Loan Forgiveness of PPP Loans
   • PPP Loans – The CARES Act
   • Maximum Amount of Loan
   • Allowed Uses of PPP Loan Proceeds
   • Maximum Amount of Forgiveness
   • Reduction of Loan Forgiveness
   • Employee Compensation

4. Q&A
Reporting Opportunities

- Cares Payroll Protection Report
- ACA Large Client Compliance Report
- FFCRA Average Hours and Wage Report
- FFCR Act Business Credits
- Employee Retention Tax Credit Report
- Payroll Summary / Payroll Register
- Coming Soon:
  - Payroll Protection Forgiveness Report
### FFCRA Tax Credits

#### Business Credits

<table>
<thead>
<tr>
<th>Credit Type</th>
<th>Amount</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>FFCR Act - SickPay</td>
<td>2079.00</td>
<td>0.00</td>
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<tr>
<td>FFCR Act - FMLA</td>
<td>3330.00</td>
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<td>FFCR Act - SickPay</td>
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<td>FFCR Act - FMLA</td>
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<td>0.00</td>
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</table>

#### Credit Details

- **Credit Type:** FFCR Act - SickPay
- **Total Credit Amount:** 1691.33
- **Credit Previously Utilized:** 0
- **Remaining Balance:** 0
- **Date Entered:** 4/16/2020

#### Other Details

- **Qualified Employee Sick Payments:** 1445.37
- **Employer Medicare Credit on Payments:** 20.96
- **Qualified Employer Health Plan Expenses:** 225.00
- **Request of Advance payment of Employer Credit:**
  - **Filing Type:** Form 941
  - **Pay Date:** 4/24/2020
• Are you tracking Qualified Healthcare Expenses (QHE)?
• Deferred Compensation – COVID Sick Leave Status
Breakdown of New Payroll Protection Program Guidelines
BREAKDOWN OF NEW PPP GUIDELINES

• New bill provides an additional $320 billion for PPP loans

• $30 billion is set aside for loans made by Insured Depository Institutions and Credit Unions with assets between $10 billion and $50 billion

• $30 billion set aside for loans made by CDFI’s (Community Development Financial Institutions Fund), small insured depository institutions, and credit unions with assets less than $10 billion

• Additional $50 billion for Economic Injury Disaster Loan (“EIDL”) Program

• Additional $10 billion for EIDL grants
WHO IS ELIGIBLE FOR THE PPP?

• The business must have been in operation on February 15, 2020.

• **Maximum Number of Employees.** For loans made under the Paycheck Protection Loan program, all businesses, certain nonprofit organizations, veterans organizations and Tribal business concerns that each employ (a) 500 employees or fewer (including any employee employed on a full-time, part-time, or other basis) or (b) if higher, the maximum number specified for the type of business in the SBA’s Table of Small Business Size Standards, are eligible to qualify for Paycheck Protection Loans. Generally, the SBA affiliation rules will apply unless there is a special exemption.
WHO IS ELIGIBLE FOR THE PPP?

• **Hotels and Restaurants.** A significant waiver of the standard rules will apply to hotels, restaurants and other food service providers that have no more than 500 employees per location. Such businesses also are exempt from the affiliation rules in connection with Paycheck Protection Loans.

• **Sole Proprietors, Independent Contractors, and Self-Employed Individuals.** Individuals who operate under sole proprietorships or as independent contractors, as well as individuals who qualify as “self-employed individuals” under Section 7002(b) of the Families First Coronavirus Response Act (based on eligibility to receive sick leave if similarly employed by an employer), also will qualify for Paycheck Protection Loans.
WHO IS ELIGIBLE FOR THE PPP?

• **Nonprofit Organizations.** Organizations described in Section 501(c)(3) of the Internal Revenue Code that are exempt from federal taxation under Section 501(a) of the Internal Revenue Code will qualify for Paycheck Protection Loans (but affiliation rules will apply).

• **Nonprofit Veteran’s Organizations.** Organizations described in Section 501(c)(19) of the Internal Revenue Code that are exempt from federal taxation under Section 501(a) of the Internal Revenue Code will qualify for Paycheck Protection Loans (but affiliation rules will apply).

• **Tribal Business Concern.** Small business concerns that are either (a) wholly owned by one or more Indian tribal governments or by a corporation wholly owned by one or more Indian tribal governments, or (b) owned in part by one or more Indian tribal governments, or a corporation that is wholly owned in part by one or more Indian tribal governments, as long as all other owners are U.S. citizens or small business concerns will qualify for Paycheck Protection Loans.
OTHER BORROWER REQUIREMENTS

• **Certification.** Each borrower of a Paycheck Protection Loan must make a good faith certification that: (1) the loan request is necessitated by current economic conditions to support ongoing operation of the business; (2) funds will be used to retain workers and maintain payroll or make payments on mortgages, leases, utilities and/or other debts incurred before the covered period; and (3) it does not have an application pending for, and has not and will not receive between February 15, 2020, and December 31, 2020, a duplicative Paycheck Protection Loan.

• **Existence as an Employer.** Lenders extending Paycheck Protection Loans will verify that the borrower (1) was in operation as of February 15, 2020, and (2) had employees for whom the borrower paid salaries and payroll taxes, or paid independent contractors as reported on a Form 1099 MISC.
• The maximum loan amount under PPP is the lesser of:
  ➢ the average total monthly payments by the applicant for payroll costs* incurred during the 1-year period before the date on which the loan is made multiplied by 2.5**;
  ➢ plus the outstanding amounts of any Emergency Injury Disaster Loan (EIDL) obtained on or after January 31, 2020 which is to be refinanced under this loan; OR
  ➢ $10,000,000.00.
• Paycheck Protection Loans will accrue interest at a rate of 1% per annum.
• The principal amount of a Paycheck Protection Loan that is not forgiven in accordance with the CARES Act will continue as a loan guaranteed by the SBA with a maturity of 2 years. The CARES Act waives guarantee fees and annual fees typically payable to the SBA under the Business Interruption Loan Program during the covered period. In addition, prepayment penalties are waived.
Maximizing Loan Forgiveness of Paycheck Protection Program Loans
A highly-touted component of PPP Loans is the concept that the loans may be forgiven and that the borrowers will have to repay little, if any, of the principal borrowed or interest on that amount. Although it is fairly easy to calculate the maximum amount of the loan available to an eligible borrower, the calculation of loan forgiveness is more complex. And importantly, borrowers may be able to take actions that increase the amount of the loan that is forgiven (and reduce the amount of the PPP Loan that must be repaid by the borrower).

Note that the maximum amount of the PPP Loan and the maximum amount that can be forgiven are calculated in different ways – involving different categories of expenses and different time periods.
• The amount that can be borrowed as a PPP Loan equals 2.5 times the average monthly payroll costs (broadly defined) during a prior 12-month period, while the maximum amount that can be forgiven is determined as the amount that the borrower spends during the 8-week period following the origination of the PPP Loan on payroll, rent, mortgage interest, and utility payments (with non-payroll costs capped).
The maximum amount that can be borrowed under a PPP Loan is the lesser of (a) $10 million or (b) 2.5 times the average total monthly payments by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made, plus the outstanding amount of certain existing SBA loans that will be refinanced with the PPP Loan. (Note that certain other calculations apply for seasonal businesses.)
“Payroll costs” are defined as the sum of payments of any compensation with respect to employees comprised of:

- salary, wage, commission, or similar compensation;
- payment of cash tip or equivalent;
- 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; or
- payment of state or local tax assessed on the compensation of employees; and
- the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than $100,000 in 1 year, as prorated for the covered period.
The following are excluded from payroll costs:

- the compensation of an individual employee in excess of an annual salary of $100,000, as prorated for the covered period;
- taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period;
- any compensation of an employee whose principal place of residence is outside of the United States;
- qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–127); or
- qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116–127).
The allowable uses of the PPP Loans include the following through June 30, 2020:

- payroll costs;
- costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- employee salaries, commissions, or similar compensations;
- payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
- rent (including rent under a lease agreement);
- utilities; and
- interest on any other debt obligations that were incurred before the covered period.
The maximum amount of a PPP Loan that can be forgiven (the “Expected Forgiveness Amount”) is equal to the sum of the following costs incurred and payments made during the 8-week period after the loan is made:

• payroll costs; and
• any payment of certain obligations that were incurred before February 15, 2020:
  • interest (but not principal) on any mortgage obligation;
  • any payment of rent; and
  • any utility payment.
• According to a Final Interim Rule issued by the SBA shortly after the enactment of the CARES Act, not more than 25% of the forgiveness amount may be for non-payroll costs.
The amount of forgiveness of a PPP Loan may be reduced either because the employer has reduced either the number of employees or the amount of salary for certain employees that have been retained.

The CARES Act provides a mechanism, however, to mitigate the reduction in certain situations.
The CARES Act contains two tests related to forgiveness of a PPP Loan based on the number of employees of the borrower at certain points in time. There will be no reduction in the Expected Forgiveness Amount based on headcount if the borrower passes either of these two tests.

In one of these tests related to the number of employees, the borrower must compare the number of full-time equivalent employees on February 15, 2020, to the number on June 30, 2020. If the June 30th headcount is equal or greater than the headcount on February 15th, then there is no reduction of the Expected Forgiveness Amount of the PPP Loan based on headcount concerns.
In the event that the borrower is unable to satisfy the test described above, there is another, somewhat more complicated test related to employee headcount. In this alternate analysis, the Expected Forgiveness Amount will be reduced by a factor obtained by multiplying Expected Forgiveness Amount by the number calculated as:

1) the average number of full-time equivalent employees per month employed by the borrower during the 8-week period following the origination of the loan, divided by

2) either (at the option of the borrower)
   a. the average number of full-time equivalent employees per month employed by the borrower during the period beginning on February 15, 2019, and ending on June 30, 2019; or
   b. the average number of full-time equivalent employees per month employed by the borrower during the period beginning on January 1, 2020 and ending on February 29, 2020.
For purposes of these calculations, the average number of full-time equivalent employees is determined by calculating the average number of full-time equivalent employees for each pay period falling within a month. Additional guidance from the SBA may be required on determining the level of employment that qualifies as full-time equivalent (although in other portions of the CARES Act the definition covers employees working 30 hours per week or 130 hours per month).
In addition, in the tests described above the SBA will be looking at the number of employees, but not the identification of such individuals. In other words, the specific employees in the period following the PPP Loan do not need to be the same persons employed by the borrower in the period prior to the PPP Loan.
The Expected Forgiveness Amount also may be reduced to the extent that certain employees that have been retained by the borrower suffer a reduction in salary during the 8-week period following the origination of the loan as compared to a prior period. For these calculations, the borrower will include only those employees (the “Tested Employees”) who were retained by the employer (that is, employed by the borrower during the relevant periods both before and after the PPP Loan was made) and did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount of more than $100,000.
In the first and more simple of the salary tests, the borrower must compare the salary of each Tested Employee on February 15, 2020, to the salary of that Tested Employee on June 30, 2020. If the salary of each Tested Employee on June 30th is the same or greater that such employee’s salary on February 15th, then there is no reduction of the Expected Forgiveness Amount of the PPP Loan based on employee compensation concerns.
In the event that the borrower is unable to satisfy the test described above, there is another, somewhat more complicated test related to employee compensation. In this second analysis, the Expected Forgiveness Amount will be reduced by the aggregate amount of any reduction in total salary or wages of all Tested Employees during the 8-week period following the origination of the PPP Loan that is in excess of 25 percent of the total salary or wages of each such employee during the most recent full quarter during which the employee was employed before the 8-week period (which, unless the PPP Loan program is extended beyond its current expiration date of June 30th, would appear to be in all instances the first calendar quarter of 2020).
Note that the second salary test has significant flexibility – forgiveness of the PPP Loan will not be affected as long as the employer continues to provide each Tested Employee with at least 75% of the salary of that employee during the relevant pre-loan period.
The maximum amount of a PPP Loan that may be forgiven will be the amount of loan proceeds used by the borrower for payroll costs and for qualifying rent, mortgage interest, and utility payments during the eight-week period after the loan is disbursed – which amount may be less than the total amount of the loan. To maximize forgiveness of a PPP Loan, a borrower should make sure that during the eight-week period at least 75% of the loan proceeds are used for payroll costs, and the remaining amount (of up to 25% of the loan proceeds) are used for qualifying rent, mortgage interest, and utility payments.
Borrowers also need to keep a focus on both the number of employees as well as the amount of reduction in salary for those employees that have been retained. A borrower can avoid reduction of loan forgiveness by satisfying either of the two headcount tests and either of the two salary tests (as described above). Understanding these tests now allows borrowers time to implement actions, for several tests not later than June 30th, that may allow the entire PPP Loan to be forgiven.
In the end, however, borrowers may determine that the steps required to maximize PPP Loan forgiveness may require the borrower to take on obligations (such as new hires) that may not make sense under the circumstances. Depending on the facts of a particular situation, a borrower may choose to forgo the opportunity to seek maximum loan forgiveness with the understanding that any amount of the PPP Loan not forgiven is fairly inexpensive working capital.
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