

## Paycheck Protection Program Reporting Best Practices

04/17/20

Under the Paycheck Protection Program (PPP), institutional lenders are authorized to make potentially forgivable loans to recipients (Recipients) to ease the economic effects of the coronavirus pandemic. The loans are guaranteed by the Small Business Administration (SBA) and are eligible to be forgiven in whole or in part if the Recipient meets certain criteria involving the use of the loan proceeds. Although the initial appropriation for the PPP has been exhausted as of this writing, Congress is considering additional funds so there may be more availability of PPP loans in the future. For those of you who have secured PPP loans already, the following are suggestions for Recipient loan disbursement and recordkeeping to maximize the amount of loan forgiveness.

Use of Proceeds. PPP is intended to assist Recipients with keeping workers on payroll and to pay other specific types of business overhead during the eight week period following the date of the loan.

1. Use loan proceeds ONLY for covered expenses incurred during the eight weeks following the date of the loan. In general, these expenses include:
  - a. Payroll expenses for employees to the extent making \$100,000 per year or less, excluding federal withholding tax and FICA
  - b. State and local payroll and unemployment taxes and payments
  - c. Employee health and retirement benefits
  - d. Utilities (i.e., electric, gas, water, telephone, internet) where service commenced before February 15, 2020
  - e. Rent payments under business leases for buildings or equipment signed before February 15, 2020
  - f. Interest payments (but not principal payments) under Recipient's loans or mortgages signed before February 15, 2020
2. Bear in mind that at least 75% of loan proceeds must be used for payroll expenses.
3. Also bear in mind that the payment of non-payroll expenses is permitted only to the extent they do not exceed 25% of the loan proceeds.

Loan Forgiveness. PPP loan forgiveness is available to Recipients who have:

1. Made application for forgiveness. Each Recipient's lender should advise when they will accept a forgiveness request and what form the request will take. Some lenders include a forgiveness request with their loan document package.
2. Demonstrated that their use of loan proceeds has complied with PPP requirements, including the use of at least 75% of proceeds for payroll purposes.
3. Maintained a number of full time equivalent (FTE) employees on payroll since the date of the loan at least equal to the average number of FTE employees Recipient previously maintained.
  - a. The basis for comparison can be the number of FTE employees Recipient had for EITHER the period from February 15, 2019 through June 30, 2019, OR the period from January 1, 2020 through February 29, 2020, as the Recipient elects
  - b. Seasonal businesses use the period from February 15, 2019 through June 30, 2019
  - c. If employees were let go between February 15, 2020 and April 26, 2020, the employees may be rehired or replaced by June 30, 2020 without jeopardizing loan forgiveness
4. Maintained compensation of employees on payroll since the date of the loan at prior levels (based on most recent calendar quarter) or with reductions of not more than 25%.

- a. If employees' compensation was reduced between February 15, 2020 and April 26, 2020, compensation may be restored by June 30, 2020 without jeopardizing loan forgiveness
5. Provided a certification of an authorized person as to the foregoing.

**Reporting Requirements.** Each Recipient must maintain backup documentation to support the proper use of the loan proceeds, just as one would maintain financial records of income and deductible expenses against the possibility of a tax audit. It makes sense to segregate the loan proceeds in a separate account so as to more easily track how they are spent. As PPP loans are made by individual lenders and not directly by SBA, each Recipient should check with its lender to see exactly what reporting will be required during the loan term and to support loan forgiveness. There is also the possibility that SBA will issue additional guidance. At a minimum, however, we advise that each Recipient maintain the following:

- Proof of employment and payroll for 8 week period since the date of the loan, including:
  - Employee list
  - Payroll report reflecting gross wages and paid time off (PTO)
  - IRS payroll tax filings (including forms 941 and 940)
  - State and local payroll tax filings
  - Unemployment tax filings
  - Group health plan insurance premium invoices, as well as plan documents
  - Employer funding for retirement plan, including proof of submissions to plan administrator
- Similar proof of employment and payroll for both of the comparison periods (February 15, 2019 through June 30, 2019 and January 1, 2020 through February 29, 2020)
- Documentation for payment of expenses incurred during 8 week period since the date of the loan on services, leases and loans initiated before February 15, 2020, such as:
  - Cancelled checks, payment receipts and account statements
  - Loan statements, including breakdowns of interest expense
  - Utility bills (electric, gas, internet, phone)
- Copies of leases and loan documents demonstrating that the obligations were initiated before February 15, 2020
- Copies of bills or other proof that utilities were initiated before February 15, 2020
- Narrative of financial damage business the Recipient has suffered due to the economic uncertainty surrounding the coronavirus pandemic and COVID-19, including numerical estimates of losses and comparison to 2019 income if feasible. This narrative is fact sensitive and will be different for each Recipient, but can include descriptions of:
  - Decline in revenues due to pandemic (e.g., estimates of lost business through store closures, loss of non-emergent services, loss of elective procedures)
  - Increase in costs of supplies and raw materials due to pandemic
  - Unavailability of supplies due to pandemic (e.g., loss of foreign supply chains, hoarding of key supplies)
  - Reduced need for employees (which would have resulted in layoffs or furloughs but for the PPP loan)
  - Cancellation of trade shows, advertising or business travel that would otherwise have resulted in revenue
  - Customers' breach or non-fulfillment of contracts
  - Additional expenses for cleaning and sanitizing facilities

We hope the foregoing will be helpful to you in administering your use of the PPP loan proceeds in accordance with Congressional intent and to maximize your loan forgiveness. If you have any questions, we are ready to help. Please contact [Doug Lubic](#) or [Pete Greenbaum](#) for further information and assistance.

#### **Attorneys**

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