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My Business has received its Paycheck Protection Program loan funds

What do I do now?

Frequently asked Questions:

As of April 25, 2020

Congratulations on having successfully applied for and received your Paycheck Protection Program (PPP) loan! This loan is designed to provide funds to cover eligible payroll costs as well as certain other allowed costs, over the next eight weeks.

If you use these funds as allowed (i.e. meet the criteria established by the federal government, as interpreted by your lender) you may receive forgiveness of up to 100% of the loan amount.

What should I do with the PPP loan money upon receipt?

- Immediately move all of the loan proceeds to a separate bank account. If you do not have one open a new account at your bank.

Why should I separate the PPP loan proceeds from my other business bank accounts?

- In order to be granted forgiveness of the loan you must prove, to your lender's satisfaction, that the PPP funds were spent on "allowed" expenses and in the appropriate amounts:

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- At least 75% spent on “allowed” payroll expenses
- No more than 25% spent on “allowed” expenses other than payroll
- Comingling the PPP funds with other business funds may make it more difficult or impossible to meet your lender’s standard of proof concerning use of funds.
- Ask your lender what documentation will be acceptable to show use of the PPP funds

Note: Some banks are interpreting the forgiveness rules such that they will not grant any loan forgiveness unless at least 75% of the PPP funds are used for payroll. A business might not meet the 75% minimum if, for example, it has employees that refuse to return to the payroll and remain on unemployment. The unspent money remaining in the PPP account might negatively impact the loan forgiveness calculation.

How does my business become eligible for loan forgiveness?

- By satisfying the loan forgiveness requirements as outlined in your loan document over the eight week period after receipt of the loan proceeds.

When does the eight week period begin?

- On the day your receive your loan proceeds

What is my business required to do to obtain maximum loan forgiveness?

The PPP funds are intended to allow an employer to maintain its payroll at the same number of employees, and at the same pay rate, during the eight weeks following receipt of the loan, as existed before the Coivid-19 impacts were experienced. In addition, an employer can use up to 25% of the PPP proceeds for other allowed non-payroll expenses.

Specifically the testing standards are as follows:

For most non-seasonal businesses:

- At least 75% of the PPP loan proceeds must be used for allowed payroll costs
- The business must maintain its employees (or rehire previously furloughed or laid off employees) so as to have the same number of average monthly “full-time equivalent” (FTE) employees during the eight week period after receipt of the loan as it had during the period January 1 - February 29, 2020 (other comparison periods may apply for seasonal employers and new businesses)
- The business must “maintain” payroll levels. This is defined as no employee may have his or her pay rate reduced by more than 25% compared to the employee’s annualized pay rate during the most recent quarter that he or she was employed

What difficulties might my business encounter in meeting any of the forgiveness tests?

- Due to the \$600 weekly additional unemployment benefits being provided to claimants, your furloughed or laid off employees might determine that they are paid more by remaining on unemployment and decide not to “return to work”
- This may prevent your business from employing the same number of FTE employees during the eight week period after receipt of the loan as compared to the period January 1 - February 29, 2020
- Because payroll funds for such employees would remain unspent in the PPP bank account, unless carefully tracking its spending, a business may inadvertently use them to pay other allowed expenses such as rent, in excess of the maximum allowed 25%.

What types of expenses are allowed to be paid from the PPP loan proceeds?

- Payroll costs, including benefits (see below)
- Interest (not principal) on mortgage obligations, incurred before February 15, 2020
- Rent, under lease agreements in force before February 15, 2020
- Utilities, for which service began before February 15, 2020.

What counts as payroll costs?

- Salary, wages, commissions, or tips (capped at a rate not to exceed \$100,000 on an annualized basis for each employee)

- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefits
- State and local taxes assessed on compensation
- 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 types of expenses are not allowed to be paid from the PPP loan proceeds?

- Employer portion of FICA & Medicare taxes (see important note ahead)
- Principal on loans
- Compensation to an employee at a rate in excess of \$100,000 per year annualized

What changes must I make to my financial systems?

- Payroll should be paid from the new PPP bank account; inform your payroll processor of the banking information changes
- Allowed employee tax withholdings must be paid from the PPP bank account
- Employer benefits, including any employee amounts withheld from payroll (example-the amount an employee chooses to withhold from gross pay in order to contribute it to a 401(k) plan), must be paid from the PPP bank account

What are my obligations as an employer for paying the employer portion of FICA & Medicare taxes on payroll paid during the eight weeks after receipt of the PPP loan?

- The CARES Act allows employers to defer payment of the employer portion of FICA and Medicare taxes due between March 27, 2020 and December 31, 2020.
- The unpaid amounts are due on the following schedule:
 - 50% of the total deferred amount on December 31, 2020
 - The remaining 50% on December 31, 2021

It seems that tracking the PPP funds spent may quickly become complicated. Are there any ways to simplify this process?

If a small business were to apply these rules literally, imagine some of the additional steps that would be required:

- For employees earning more than \$100,000 per year, issuing two payroll checks each pay period. One paycheck from the PPP bank account for the amount of payroll up to the annualized rate of \$100,000 per year (\$1,923.08 per week) and a second payroll check from a different bank account for the amount over the \$1,923.08 per week.
- Making eligible loan payments with two checks-one check from the PPP bank account for the interest portion of the loan payment and one check from a different bank account for the principal portion of the loan payment
- Separating the total federal tax deposits associated with each payroll into individual components of

employee FICA/Medicare and income tax withheld, and the Employer portion of FICA/Medicare tax, each to be paid from a different bank account.

Ideally your lender will view such steps as an unreasonable and unnecessary burden. As an alternative perhaps they will allow transfers between the bank accounts to reimburse the PPP account for unallowed expenses initially paid from that account.

Providing an accurate, understandable and substantiated record of the use of the PPP loan to your bank should be satisfactory. But you must inquire of your bank to determine if this will be allowed.

When and how do I apply for forgiveness of my PPP loan?

- Apply to your lender directly, within the specified time period, and in a manner that follows their specific procedures. As an example, one lender has required submission of all documents within 10 days of the end of the eight week period
- The lender has 60 days under the terms of the CARES Act to make a decision on forgiveness. Confirm with your bank their decision time frame.

Important disclaimer:

The information provided here has been compiled from the text of the applicable laws, regulations issued by the U.S. Treasury Department and other agencies, and various other professional or published sources deemed reliable by us. Your business's PPP loan is a debt instrument between you and your lender, subject to the terms as outlined in the loan documents you signed prior to accepting the loan. You must apply directly to your lender for loan forgiveness. Your lender will make the final decision on how much, if any, of your PPP loan is eligible for forgiveness. Your lender will make its decision based on its interpretation of the guidance it

has received from various government authorities, including but not limited to the U.S. Treasury Department and the U.S. Small Business Administration (SBA).

You should immediately discuss with your lender its understanding of the criteria to grant the maximum loan forgiveness possible in your circumstances.

Different banks may reach different decisions of the loan forgiveness calculation when reviewing identical fact patterns.

We will be happy to provide assistance in implementing the Paycheck Protection Program for your business!

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