

May 9, 2020

Dear Friends and Colleagues,

Many small businesses received their Paycheck Protection Program loans as early as April 9, 2020. Given the eight-week window for loan forgiveness, those businesses are now facing a deadline of June 4, 2020 (less than a month away) to get their PPP financial house in order.

Many of the questions that we addressed in a previous email are still awaiting answers, while new issues have arisen. We thought it would be helpful to update what we consider **Open Items**, areas where the Small Business Administration and the Internal Revenue Service need to provide clarification to those looking for loan forgiveness.

Determining if your PPP loan is necessary (New)

Unfortunately, because of a few larger businesses taking advantage of these strange economic times, the SBA is now frightening small businesses about the “necessity” of their PPP loan. The borrower certification they are now requiring states that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

We believe that applying for a PPP loan is the smart, safe play for a business owner. Given our economic uncertainty, the loan request is necessary. Why? Even if your business is financially stable today, what about a month from now? Or six months from now? By the time your business needs financial assistance, it may be too late.

Remember, financial security can slip away quickly: staff sickness forces your practice to close down for two or three weeks...employees and clients are then hesitant to come back, causing further loss of revenue...the overall economy continues to tank, squeezing the consumer and their ability to spend money...the downturn also causes banks and lenders to contract, making it difficult to borrow money or open a credit line...

These are scary and unprecedented times. It is our opinion that small businesses should not be concerned about applying for PPP loans, or keeping the funds if approved.

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Loan Forgiveness (New)

Another question that has come up: will the Full-Time Equivalent portion of the formula be impacted by employees who leave on their own accord?

Nothing has been provided on this specifically by the SBA, but they do address a similar scenario: will a borrower's PPP loan forgiveness amount be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer? The answer to this is no. Laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) are excluded from the loan forgiveness reduction calculation. To qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower.

It seems logical that employees who leave on their own accord would fall under the same exception.

Hazard Pay (No Change)

Can a business pay their employees a premium – Hazard Pay – for coming in and working? This would either be in the form of increased wages, or some type of monthly bonus. The idea is that workers willing to come in despite the risks should be rewarded. Nothing we have read so far prohibits this.

Forgiveness Formula: accrual basis or cash basis (No Change)

How should the forgiveness formula be calculated? The SBA defines what should be included as "costs incurred and payments made," which seems to have conflicting meanings. The accrual basis of accounting would imply including the costs incurred during the eight week period. The cash basis of accounting would imply including only payments made during the eight week period. The SBA has to let us know which way this cuts.

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Does the payroll you just paid count in the forgiveness formula? (Updated)

If your loan was received on April 20, and your payroll was processed on April 22, does that payroll count in the forgiveness formula? The costs were incurred prior to receiving the loan, but payment was made after. This is where the SBA needs to clarify.

New: On a related note, a bipartisan group of senators is urging the SBA/IRS to lower the forgiveness threshold from 75% payroll related/25% occupancy to 50%/50%. This would lessen the pressure on small business owners with high occupancy costs.

Short payroll at the end of 8 weeks (No Change)

If a company's payroll is going to be processed four days after the end of the eight week period, can the company run a short payroll to get the payment in before the deadline? We haven't ready anything that prohibits this.

Separate Bank Account (Updated)

Is a separate bank account required to hold the PPP funds? Nothing we have read requires this. For some, having the funds in a separate account allows for easier accounting. We recommend using the PPP Accounting spreadsheet on our website to help monitor how your business' spending is tracking.

New: In addition to proof of payment, also have the related invoices/filings for the appropriate time periods ready as back-up.

Pre-paying health insurance benefits (No Change)

While the text isn't specific, this is an area where "costs incurred" would come into play. In other words, you likely can't pre-pay six months of health insurance and have those payments count in the forgiveness formula.

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Paying retirement plan benefits (No Change)

Many businesses don't pay the matching portion of their retirement plans until after the year has closed. Now, given the circumstances, it would probably be wise to pay the eight weeks of employer-matched retirement plan contributions before the eight week time period is up.

Cell phones considered as utility payments? (Updated)

Consistency would likely be the key. Has the business always paid cell phone bills for owners/doctors/staff?

Note: It appears that building security can also be included in the utility category.

Owner Rent (No Change)

We've seen conflicting information on whether rent paid to a related party can be part of the forgiveness formula. On the one hand, a business has to pay rent for its facility, no matter who owns the real estate. On the other hand, it's easy to see how this could be an area ripe for abuse. This is one key area the SBA needs to provide clarity on.

Deduction Allowed? (Updated)

Let's say your loan amount is \$100,000. You spend the entire \$100,000 properly and the PPP loan is forgiven. Do you still get to deduct what you spent the \$100,000 on? Typically, the forgiveness of debt is considered taxable to the business, but as it relates to the PPP Loan, it is specifically not taxable. So what happens to the payroll and rent that you spent those fund on? Can they still be deducted? If so, it would be a win/win for small businesses. The SBA has yet to clarify this point.

New: The IRS issued guidance that stated these expenses would not be deductible. However, a bipartisan group of senators have introduced a bill which would allow the deduction of these expenses, even if the PPP loan was forgiven.

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Should you have any questions about the above, please feel free to contact our office at any time.

Sincerely,



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