

B S L B V

May 8, 2020

You Received a PPP Loan, What Now?

I. Uses of PPP Proceeds

Now that you have received a PPP loan, businesses should strive to make most, if not all, of the loan forgivable. Regarding forgiveness, the focus is on the 8-week covered period which begins after loan funds are received in your account. The PPP proceeds can be used for payroll expenses, and non-payroll expenses as discussed below. Only 25% of the forgivable portion of the loan will be for non-payroll expenses, which are discussed below. Payroll expenses are equal to the sum of:

- salary, wage, commission, or similar compensation; for a partnership, recent guidance from the SBA explains that payroll costs include not only guaranteed payments to a partner, but also any partner's share of income of the partnership subject to self-employment income. These amounts are subject to a per-employee or per-partner cap of \$100,000;
- payment of cash tip or equivalent;
- payment for vacation, parental, family, medical, or sick leave (excluding FFCRA eligible tax credits);
- 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.

Payroll expenses do not include:

- the compensation of an individual employee — or the self-employment income of a partner in a partnership — in excess of \$100,000, as prorated for the covered period;
- taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code 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 (FFCRA); or
- qualified family leave wages for which a credit is allowed under section 7003 of the FFCRA.

Recent guidance from the SBA clarified that any amounts that an eligible borrower has paid to an independent contract or sole proprietor should be excluded from the eligible business's payroll costs. The

main basis for this exclusion is the fact that an independent contractor or sole proprietor will itself be eligible for a loan under the PPP if it satisfies eligible requirements.

The PPP loan proceeds can also be used for interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, but not more than 25% of the forgiven amount of the loan may be for non-payroll costs. This means that small businesses are unlikely to have the total amount of the loan forgiven, unless payroll is increased to higher levels. This will be clarified in the coming weeks with additional guidance from the SBA, but small businesses may need to get creative to maximize the covered uses of proceeds during the covered period to achieve full forgiveness. We remain hopeful the SBA will issue guidance for situations in which an employer extends or renews a lease agreement after February 15, 2020. We also are hopeful for further guidance on whether self-related party rental payments, and rental payments for machinery or equipment, fall under permitted uses of PPP proceeds for forgiveness consideration.

There are also questions of how the SBA is defining incurred and paid because how it is construed can impact the determination of forgiveness over the 8 week covered period. For example, an employer could receive PPP proceeds on April 20, 2020 and have a payroll cycle upcoming on April 27, 2020. Does an employer get to count the full payment of the two week pay period towards the forgiveness, or can an employer only count the payroll wages incurred from April 20, 2020 forward? We expect the SBA to clarify this issue and provide definitions to the terms. What follows is a general example of how the forgiveness provisions may shake out.

Forgiveness Hypothetical. ABC Co. borrowed \$100,000 in PPP proceeds on April 10, 2020. Over the next 8 weeks, ABC Co. spent \$50,000 on payroll costs and \$40,000 on rent and utilities. Under this example, ABC Co.'s loan forgiveness is limited to \$66,667, which is representative of \$50,000 in payroll costs and \$16,667 in rent and utilities. Unfortunately, this 25% limitation means that unless a business actually INCREASES its payroll costs over the 8-week covered period relative to its 2019 pace, full forgiveness isn't possible. Also, assume ABC Co. had \$3.6 million in payroll costs in 2019. The PPP loan proceeds for ABC are \$750,000. Assume further that ABC Co. continues its payroll during the covered period at the EXACT SAME PACE as it paid out in 2019. During the 8 weeks, ABC Co. will pay out \$553,000 in payroll costs. It will use the remaining proceeds to pay rent and utilities. All is forgiven, right? Wrong. Given that the SBA is limiting the forgivable portion of non-payroll costs to 25%, the maximum amount of loan forgiveness for ABC Co. is \$738,000 ($\$553,000/75\%$). As a result, at a minimum, \$12,000 of the loan will not be forgiven.