SMALL BUSINESS RECOVERY TOOL KIT Part 2

Paycheck Protection Program

- **Paycheck Protection Program (PPP**, the $350 billion forgivable loan program available via private banks) Treasury Secretary Mnuchin said on 3/30 that the rules for the PPP "will be available starting on Friday." (April 3) Here is what we know so far:

- PPP is in effect through June 30, this program would provide eligible small businesses with government-backed interruption loans, which could then be forgiven based on the borrower keeping its employees on payroll. The following analysis is based on the language as it appears in the latest version of the legislation.

- The Paycheck Protection Program provides funding for small businesses to survive during these troubled times, as well as an incentive to maintain employment levels. The benefits of this program include:

• A flexible loan to cover operating expenses. The program would provide a loan equal to 10 weeks of a company's payroll, up to $10 million. This could be used to pay the payroll, rent, and utilities that allow a small business to keep its doors open.

• Loan forgiveness. Borrowers could have eight weeks of payroll, rent, mortgage payments, and utility forgiven if they maintain their workforce. Loan forgiveness is reduced relative to any layoffs or salary deductions.

• Incentives to rehire. While reductions in workforce usually result in a reduction in loan forgiveness, the legislation allows companies that already laid off workers to rehire them while still benefitting from full loan forgiveness.

• Broadened eligibility. Participation in the program is open to all businesses and 501(c)3 nonprofits with fewer than 500 employees or that meet SBA's small business criteria, as well as independent contractors. In order to account for COVID-19's disproportionate impact on the restaurant and hospitality sectors, individual locations of companies in those sectors will also be eligible.

• Streamlined application process. The program operates directly through financial institutions, with the government waiving many requirements normally associated with such loans in order to provide small businesses relief as fast as possible. Applicants are not required to demonstrate any specific hardship, only make a good faith certification of the loan's necessity and that it will be used to retain workers.

You can download the application on the SBA website.

FAQ Paycheck Protection Program

How does my company participate in the program?

The Paycheck Protection Program operates via the Small Business Administration's existing 7(a) lending program, through which SBA offers guarantees on loans made by participating financial institutions. Applicants apply for a 7(a) guarantee directly through a participating financial institution, and, if approved, receive an SBA guarantee on their loan.

Under this program, approved lenders will be directly delegated the authority to approve loan and forgiveness applications based on the determination that a borrower was in business on February 15 and paid employees or contractors. It remains to be seen how SBA will otherwise reorganize the 7(a) process in order to accommodate this massive expansion. While some insight into what this will look like can be gleamed from the current 7(a) process—which requires several dozen pieces of documentation ranging from resumes to financial statements and can take several months—it is expected that implementing guidance from SBA will streamline this process substantially.

For this reason, it is difficult to estimate what the exact mechanics of the process will be for small businesses until SBA issues guidance. As of now, it is only clear that borrowers have to certify that the current public health crisis makes the loan necessary for their continued operations, and that they will use the loan to maintain their previous average number of monthly full-time equivalent employees. This good faith certification is in contrast with any specific demonstration of need, which could have slowed down the application process.

On a positive note, the legislation does outline several measures that would expedite the rollout of the program, including:
• Waiving application fees.
• Reimbursing financial institutions for processing applications.
• Extending participation to additional lenders.
• Waiving the requirement that an applicant cannot find credit elsewhere.
• Waiving requirements for collateral and personal guarantees.

What documents do I need to present to my financial institution?

Borrowers should expect to submit documentation such as payroll numbers demonstrating their eligibility to participate in the program. Additionally, the legislation explicitly requires contractors and sole proprietors to establish their eligibility with payroll tax filings, Form 1099-MISC, and documentation of income and expenses.

How do I determine if my business is eligible?

Participation in the Paycheck Protection Program is open to businesses, 501(c)3 nonprofits, and veterans' organizations that have fewer than 500 employees or meet one of SBA's industry-specific small business thresholds – found here. Sole proprietors, independent contractors, and some other self-employed individuals are also eligible.

Additionally, restaurants and hospitality businesses with multiple locations are eligible, so long as they have fewer than 500 employees per location. Affiliation rules are waived for restaurants and hospitality locations with fewer than 500 employees, franchises, and businesses financed by small business investment companies.

What expenses are covered?

SBA will offer a 100 percent guarantee on a loan amounting to the recipient's average monthly payroll costs over the previous year, times 2.5. In other words, this loan amounts to two and a half months of payroll costs. The maximum loan amount is $10 million.

For the purposes of loan amount and forgiveness (see below), payroll is defined as consisting of: (1) salary, wage, commission, or similar compensation; (2) cash tip or equivalent; (3) payment for vacation, parental, family, medical, or sick leave; (4) dismissal or separation pay; (5) health care or retirement benefits; (6) state and local payroll taxes; and (7) payments to sole proprietors and independent contractors that are a wage, commission, income or otherwise net earnings from self-employment. The calculation of payroll costs excludes compensation to employees exceeding $100,000 on an annualized basis, federal payroll taxes, compensation to employees residing outside the United States, and leave for which the employer is receiving a tax credit under the "Phase II" coronavirus response.

While loan amount is calculated based on payroll costs, the loan itself can be used for a variety of essential business expenses including payroll, rent, mortgage interest, interest on debts, and utilities.

How can my loan be forgiven?

Loans made under the program can be forgiven for the total amount that the borrower spent on payroll (excluding annualized compensation over $100,000,) mortgage interest, rent, and utilities in the eight weeks following their loan's origination. Employers are additionally allowed to make extra payments to tipped employees to account for their loss of tips. Forgiven expenses are generally restricted to obligations undertaken before February 15 of this year.

Importantly, the forgiven debt is not counted in taxable income.

The amount of forgiveness is reduced proportionally to any reduction in the borrower's workforce, as well as any reduction in employee salary beyond 25 percent. Borrowers that have already taken action to reduce their workforce and eliminate any reduction in staff or salary through this program, however, will not be penalized. The SBA is additionally able to issue de minimis exemptions from any reduction in forgiveness.

To calculate the portion of the borrower's covered costs that will be forgiven, participants should multiply their eligible operating costs by the quotient of:

• Their average monthly number of full-time-equivalent (FTE) employees during the eight-week period, and;

• The borrower's average monthly number of FTE's during their choice of two periods—February 15, 2019-June 30, 2019 or January 1, 2020-February 29, 2020.

To achieve forgiveness, a borrower submits to their lender documents including: (1) state or federal payroll documents; (2) documentation of mortgage interest, rent, or payroll expenses; (3) certification that the information is true; and (4) any other documentation that SBA determines is appropriate. The lender will then have 60 days to determine the appropriate level of forgiveness, at which point SBA would purchase and forgive the relevant amount of the initial loan.

Any portion of the loan not forgiven will remain guaranteed by SBA and have a 10-year maturity and at most a four percent interest rate. Lenders will be required to defer payment of that loan for between six months and one year, with the ultimate deferral period set by SBA.

How does this program interact with SBA's Economic Injury Disaster Loans (EIDL)?

Borrowers are generally restricted from receiving an EIDL loan for the same purpose as a loan issued under this program. However, borrowers with an EIDL loan unrelated to COVID-19 are allowed to participate in the program, and to refinance their EIDL loans into Paycheck Protection loans. Any EIDL grant award provided under the bill (outlined in the following section of this memo) is subtracted from a borrower's loan forgiveness.

TAX INCENTIVES

The CARES Act includes several tax incentives that could be valuable to small businesses attempting to navigate the crisis:

• Employee Retention Tax Credit.
This provision would allow employers to claim a refundable payroll tax credit equal to 50 percent of wages (maximum of $10,000 in wages per employee) paid to employees during the crisis. The credit is restricted to employers who see a full or partial suspension of operations due to a shutdown order or who see gross receipts decline by more than 50 percent relative to the same quarter the previous year. For employers with more than 100 full-time employees, the credit is restricted to wages paid to employees not providing service due to COVID-19. For employers with fewer than 100 full-time employees, it is applicable to all wages.

• Delay of Payroll Taxes.
This provision would allow employers to defer payment on the employer contribution of Social Security payroll taxes through the end of the year. Half of this deferred amount would be due to be paid on December 31, 2021 and the other half by December 31, 2022.

• Modification of Net Operating Losses (NOL).
This provision would allow NOLs from 2018, 2019, and 2020 to be carried back five years and allow NOLs to fully offset income. This change is intended to allow businesses to use losses and amend prior year returns to provide liquidity during the outbreak.

• Modification on Limitation of Losses for Sole Proprietors and Pass-Throughs. This provision temporarily lifts the loss limitation for sole proprietors and pass-throughs with the intention of allowing them to utilize excess losses to provide necessary cashflow.

• Increase to Interest Expense Deduction.
This provision would raise (from 30 to 50 percent of taxable income) the limitation on interest that businesses are allowed to deduct from their 2019 and 2020 taxes.

• Technical Amendment Regarding Qualified Improvement Property (QIP).
This provision would correct an error in the 2017 Tax Cuts and Jobs Act preventing businesses, particularly in the hospitality industry, from writing off facility improvement costs immediately rather than over 39 years.

Florida Emergency Bridge Loan

Governor DeSantis has activated the Florida Small Business Emergency Bridge Loan Program that provides short-term, interest free loans of up to $50,000 to small businesses impacted by COVID-19. Business owners in Florida with two to 100 employees are eligible. The application period ends May 8, 2020. For more information, visit www.floridadisasterloan.org or call the Florida Small Business Development Center Network at (866) 737-7232.

Florida Short Time Compensation Program

The Florida Department of Economic Opportunity (DEO) offers the Short Time Compensation Program, designed to help employers maintain their staff by reducing the weekly working hours during temporary slowdowns instead of temporarily laying off employees. For information on qualifications and how to apply, visit bit.ly/2wcFnuP.

Business Damage Assessment Survey

Businesses adversely impacted by COVID-19 are encouraged to complete the Emergency Business Damage Assessment Survey online at www.floridadisaster.biz. Information submitted by businesses will help the State of Florida determine the type and level of resources needed to continue to help impacted businesses. The survey does NOT serve as an application for resources. After filling out the survey, federal, state or local agencies may reach out to your business through the contact information provided if you indicate your interest.