

LEGAL UPDATES

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I've Received my PPP Loan. Now What?

As Paycheck Protection Program (PPP) loan proceeds start coming in the door, businesses are looking to spend those funds as permitted under the CARES Act. Below is a list of important points to consider.

The 8-week loan forgiveness period begins to run on the date that the loan proceeds are disbursed to you.

Keep in mind that the manner in which these proceeds are spent will be scrutinized during this 8-week period. Take steps to safekeep the money and accurately document the uses of the funds on authorized and forgivable costs.

Deposit the loan proceeds into a segregated bank account.

Although not required under the Act, segregating the funds may help you prevent commingling with other funds and more easily track the PPP loan proceeds for forgiveness calculation purposes.

A segregated account may also help ensure that the funds are not inadvertently used for unauthorized purposes. If the funds are used for unauthorized purposes, they must be repaid, and, if knowingly used for unauthorized purposes, you may be subject to additional liability, such as fraud.

If you decide to keep the loan proceeds in a segregated account, you should coordinate that with your bank and, if you have one, your third-party payroll processor.

If you haven't done so already, consider preparing an internal impact statement and/or board resolution authorizing actions in connection with the PPP loan.

If an impact statement and/or board resolution documenting the need and authority for the business to obtain the PPP loan was not prepared in connection with the initial Loan Application, it may be beneficial to prepare such documentation during this time.

An internal impact statement and/or board resolution should, for example: (a) acknowledge the current economic uncertainty related to the COVID-19 pandemic; (b) illustrate how the business's ongoing operations are reasonably anticipated to be impacted (and/or have, in fact, been impacted); (c) express the business's intention to use the PPP loan proceeds to continue its ongoing operations; and (d) authorize the execution, delivery and performance of the PPP loan documents.

Maintain proper documentation to substantiate “payroll costs” and other authorized costs paid during the 8-week period.

PPP loan funds should only be used to pay “payroll costs,” payments of 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. An outline of what constitutes a “payroll cost” can be found in our FAQ: CARES Act SBA Loan Programs.

Payroll tax filings and other appropriate documentation (i.e., cancelled checks, payment receipts, and transcripts of accounts) will be necessary to document that the proceeds were spent on authorized expenses during the 8-week period. This verification must be provided in connection with the loan forgiveness application.

Remember that at least 75% of the loan proceeds must be used for “payroll costs.”

The Small Business Administration (SBA) requires that at least 75% of the loan proceeds be used for “payroll costs.” Further, at least 75% of the forgiven amount must be attributable to “payroll costs,” and no more than 25% of the forgiven amount may be attributable to eligible expenses other than “payroll costs.”

The amount of loan forgiveness will be reduced if you do not maintain your staff and payroll.

When making difficult workforce decisions, remember that your loan forgiveness will be reduced if you decrease your full-time employee headcount or if you decrease salaries and wages by more than 25% (compared to their most recent full quarter) for any employee that made less than \$100,000 annualized in 2019.

However, reductions in employment or wages that occur between February 15, 2020 and April 26, 2020 (as compared to February 15, 2020) will not reduce your amount of loan forgiveness if you eliminate such reductions by June 30, 2020.

After the 8-week period, file a loan forgiveness application with your lender.

The SBA has indicated that it will be issuing additional guidance regarding loan forgiveness. However, you should contact your lender directly to confirm what its loan forgiveness process will be, and what documentation it will be requiring.

Contact us

If you have further questions or require more information regarding the PPP or other aspects of the Act, please contact your Husch Blackwell attorney.

CARES Act updates

Husch Blackwell's CARES Act resource team has reviewed the Act carefully and is developing content to help clients determine how best to access the available assistance. The team will add new content frequently as the Act is implemented through a number of agency rulemakings over the coming weeks.