

Accounting Today

The not-so-forgivable PPP loans: Wrestling with SBA guidance

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Oh, what a tangled web we weave. We have all spent so much time and energy applying for the Paycheck Protection Program, trying to interpret and decipher the intent behind the words. Businesses, advisors and lenders alike have been traumatized by the process leading up to submitting the PPP applications, getting an approval, actually closing the loan and getting the funding. For some, their applications were not submitted by their lenders before the initial round of funding ran out, and then they had another chance to apply after Congress replenished the program with new funding. But for those who have been fortunate enough to have been approved for funds, and even closed and had their loans funded, now what?

We all now find ourselves wrestling with the ambiguous and sometimes nonsensical guidance that the SBA has published on the forgiveness criteria. For businesses that were able to continue operating, the process is far less confusing. Maybe these businesses did some layoffs and furloughs leading up to the CARES Act, but it is clear that the intention of the program is to encourage these businesses to hire those employees back, at no cost to them over the eight-week period following the origination of the PPP loan. But what if there is no work for those that you laid off or furloughed? Are you supposed to just hire them back, pay them for eight weeks with no work, and then lay them off again?

And let's assume that you don't hire back those individuals, but still have others on payroll that you did maintain and do need the PPP to support those retained employees. Let's further assume that you spent the PPP funds as intended; you were eligible for \$200,000, but due to the headcount reductions, only spent \$100,000 of the funds on a combination of payroll, health insurance, rent and utilities. Most people are assuming that in this case, the \$100,000 will be forgiven, assuming that the amounts spent on rent and utilities doesn't exceed 25 percent of the total spent. But this is NOT the case currently. The program was designed to retain your workforce, whether retaining all of your employees makes sense or not. Therefore the program incorporates a "penalty" of sorts; if you have a reduction in headcount in the covered period (the eight-week period subsequent to the PPP origination) as compared to the periods (as defined) leading up to the pandemic, the amount eligible for forgiveness will also be reduced, even if the amounts spent were qualified expenditures.

To illustrate, assuming in the above example that you reduced your full-time equivalent (FTE) headcount by 50 percent from before the layoffs to the eight-week period after the PPP originates, the amount that you spent that would otherwise be eligible for forgiveness is also reduced by 50 percent. So the \$100,000 that you thought was going to be forgiven will be reduced by \$50,000 and the remainder will remain a loan, along with the unspent \$100,000, unless these amounts are paid back to the bank. This will come as a shock to many who are just assuming that worst case, they won't

be able to use all of the proceeds from the PPP, but that whatever they do use and spend on qualified expenses will be forgiven. And this is just one of the landmines that awaits businesses.

There is also currently confusion surrounding whether the amounts spent on payroll that would qualify for forgiveness is based off of gross payroll, including employee withholdings and FICA tax, or net of these amounts. Mind you, businesses were able to borrow on gross and not net payroll, so common sense suggests that forgiveness would follow the same logic, but as of today, that does not appear to be the case as the rules are currently written. There will be no shortage of additional questions that arise: Is the \$100,000 cap on compensation for hourly people assumed on a 30-hour week or 40-hour week? Do hours factor into the cap at all for hourly people, or are they just limited to annualized compensation not to exceed \$100,000? Can you pay retirement plan contributions during this eight-week period, and if so, what if you are paying match amounts or profit sharing contributions for 2019 or for periods prior to the 8 week covered period?

As you can see, MUCH still needs to be addressed in order for businesses to be able to get a solid handle on their forgiveness calculations. And none of the above even addresses the dilemmas that businesses who have been forced to close, but still applied for and received PPP funds, are facing. Take a restaurant for example; are they really supposed to hire back their employees, such as servers and cooks, and pay them when the business is literally shut down? This will deplete the PPP funds and yes, will follow the intention of the program to retain employees, but do they really want businesses to hire back people and pay them to do nothing? Wouldn't the restaurant be better off using the PPP funds to hire back their employees when they are able to reopen, and accordingly, their eight-week covered period for determining forgiveness would start when they reopen instead of when the PPP loan got funded? And to complicate matters, because of the Pandemic Unemployment Assistance (PUA) incorporated into the CARES Act, many of these workers are making more money unemployed than they would if they were hired back and therefore don't want to come back right now.

Businesses, advisors and lenders need guidance, and we need it soon. Definitions need to be clarified, the rules need to be consistently applied between the application criteria and the forgiveness criteria, and businesses who are not able to reopen right now need to be provided with alternative forgiveness periods aside from the eight-week period following the PPP origination. The forgiveness process is set to end on June 30, and if guidance isn't issued soon, there will be chaos for everyone involved come June, just as there was in the few weeks after the signing of the CARES Act while businesses, advisors and lenders struggled to interpret and apply the rules to the application process. Let's hope we can learn from what we have all recently experienced and ensure that this program provides the relief that it was intended to.