GROWERTALKS

COVID-19

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Payroll Protection Refunding Rules

Mark E. Battersby

The ongoing saga of the Payroll Protection Program (PPP) continues with lawmakers agreeing to provide an additional $310 billion. The Coronavirus Aid, Relief and Economic Security (CARES) Act gave the Small Business Administration (SBA) $349 billion for small business loans to help pay up to eight weeks of payroll, taxes, mortgages, rent and utilities during the coronavirus pandemic.

The program is especially attractive for small growers with the loans being provided through local banks, credit unions and other financial institutions—backed by the U.S. Treasury—so employers can access the liquidity they need immediately without having to appeal to the SBA.

No collateral or personal guaranty is required and all payments of principal, interest and fees under the loans were deferred for at least six months.Interest is no more than 4% and repayment, if required, can be over a period of as long as 10 years. And, best of all, most loans can be converted to “grants” with the amount forgiven—excluded from the recipient’s gross income.

The new funding bill sets aside $30 billion of the additional PPP funds for loans to be made by federally insured lenders with assets between $10 billion and $50 billion. To further ensure that loans will be directed to smaller, minority or farm businesses, another $30 billion for loans can be made by community financial institutions and small, federally-insured banks and credit unions with assets under $10 billion.

Another $60 billion will be available for small business loan and grant programs delivered through an existing small-business disaster aid program, $10 billion of which will come in the form of direct grants.

Qualifying and appliying

In order to qualify for PPP funding, a grower or retailer must have fewer than 500 full- or part-time employees. PPP loans can be as large as $10 million, although most applicants will receive smaller amounts—generally a maximum of 2.5 times their average monthly payroll costs.

Keeping in mind that it’s a local financial institution that accepts the application and actually makes the loan, a loan that’s guaranteed by the SBA, a PPP application must be completed and submitted along with the required documentation.

Needed with that application will be documentation about the payroll. Although there was no need in the original program for an applying business to have sought funds elsewhere, the supplemental funding bill now reverts to the SBA guidelines that require borrowers to certify that funds weren’t available from another source. Those who’ve already received funding under the original requirements should now certify that they complied with the SBA’s usual

“Credit Elsewhere” requirement to avoid scrutiny.

Payroll costs

According to the SBA, payroll costs include:

- Salaries
- Wages
- Commissions
- Tips

And all are capped at $100,000 on an annualized basis for each employee. Also considered to be payroll costs are:

- Employee benefits, including the costs for vacation, parental, family, medical or sick leave
- Allowance for separation or dismissal payments required for the provision of group health care benefits, including insurance premiums
- Payment of a retirement benefit
- State and local taxes assessed on compensation ,and for a sole proprietor or independent contractor:
  - Wages
  - Commissions
  - Income or net earnings from self-employment again capped at $100,000 on an annualized basis for each employee

More bang for the buck

PPP loans are far more extensive than basic SBA loan guarantees or SBA disaster loans. Small growing businesses, sole proprietorships, independent contractors and self-employed individuals all can qualify.

- Sole proprietors will need to submit a Schedule C from their personal income tax returns, clearly showing the net profit from the sole proprietorship.
- Independent contractors will need to submit Form 1099-MISC in addition to their Schedule C.
- Self-employed individuals will need to submit payroll tax filings reported to the IRS.

As mentioned, the proceeds from the PPP loan program may be used only for paying certain expenses, generally:

- Payroll (including benefits)
- Mortgage interest
- Rent
- Utilities

Perhaps the most reassuring aspect of PPP loans is that they can be forgiven—so long as the rules are followed. And many rules and limits continue to apply.

Forgiven and sometimes forgotton

Money may be owed when the PPP loan is due if the loan amount was used for anything other than payroll costs, mortgage interest, rent and utilities payments over the eight weeks after obtaining the loan. In all likelihood, due to the program’s popularity, not more than 25% of the forgiven amount may be for non-payroll costs.

Money will also be due if staff and payroll isn’t maintained:

- *Number of staff.* The amount of loan forgiveness will be reduced if the operation's full-time employee headcount decreases.
- *Level of payroll.* Loan forgiveness will also be reduced if salaries and wages decrease by more than 25% for any employee that made less than $100,000 in 2019.
- *Re-hiring.* The business originally had until June 30, 2020 to restore all full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020. New deadlines, if any, have yet to be announced.

Loan forgiveness begins with submitting a request to the lender servicing the loan. The request should include documents verifying the number of full-time equivalent employees and their payrates, as well as the payments on eligible mortgage, lease and utility obligations. The business must certify that the documents are true and that the forgiveness amounts were used to keep employees and make eligible payments, after which the lender has 60 days to make a forgiveness decision.

Going, gone and going again

The PPP was swamped by businesses applying for loans, eventually reaching its appropriations limit—after approving nearly 1.7 million loans. This left thousands of small businesses in limbo as they sought financial help to keep their businesses afloat and workers on the payroll. And, unfortunately, the PPP has also been plagued with controversy and confusion.

Many businesses have complained that banks have favored customers with which they already do business. Some businesses that haven't been substantially harmed by the coronavirus pandemic have also, reportedly, received loans, along with a number of publicly-traded companies.

The SBA application Form 2483, the PPP Application Form, stated that "due to high demand, not more than 25% of the forgiven amount may be for non-payroll costs." Even though the original law allowed the use of the PPP loan proceeds to be used for such things as mortgage interest, lease payments, utilities and interest on pre-existing loans, the priority remains on payroll. In other words, in order to get loan forgiveness, most of the funds should be spent on payroll.

The cost of the PPP would, according to lawmakers, be partially offset by a reduced burden on unemployment insurance. Since it makes more sense for the government to keep people employed rather than unemployed, the program has restrictions to cap salaries and pay raises.

However, with limited funds available, even after the refunding plan, businesses that can qualify should apply as soon as possible. But, don't forget—the CARES Act greatly expanded business access to capital by creating additional programs, loans and financial incentives.