ROBINSON BRADSHAW

COVID-19 Legal Update: Paycheck Protection Program – Employer's Cheat Sheet

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Highlights

- Up to 100% of the loan can be forgiven
- 75% of proceeds must be used for payroll expenses; up to 25% can be used for mortgage interest, rent and utilities
- Two year loan term at 1% interest rate; no payments required for six months but interest accrues during those six months
- Borrowers will need to submit tax records to demonstrate eligibility, bank records may be OK if tax records are unavailable
- Independent contractors – must apply on their own
- Only one loan is allowed – SBA recommends applying for the maximum amount
- Borrower must certify that the loan is “necessary” because of economic conditions
- Rule extends lending authority to most financial institutions, regardless of current SBA lender status

Borrower Eligibility Requirements

- 500 or fewer employees whose principal residence is in the United States
- Considered a small business by SBA standards, or a 501(c)(3) or 501(c)(19) or Tribal business concern
- In operation on Feb. 15, 2020, with employees who were paid salaries or independent contractors who received 1099-MISC

Documentation Requirements – to be submitted with loan application (unclear if one of these is enough or if borrower should submit as much as possible)

- Payroll processor records

Professionals

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Practice Areas

Coronavirus Resource Center

- Payroll tax filings
- 1099-MISC
- Statements of income and expenses for sole proprietorships

Calculating Maximum Loan Amount

- Determine aggregate payroll expenses for all *employees* whose primary residence is the United States during the last 12 months.[1]
  - Payroll Expenses Include:
    - Salary, wages, commissions
    - Tips (records preferred or good-faith estimate by employer)
    - Payment for vacation, parental, family, medical or sick leave
    - Allowances for separation / dismissal
    - Payments for group benefits (health insurance, insurance premiums, retirement)
    - Payments of state and local taxes assessed on employee compensation
  - Exclusions from Payroll Expenses[2]
    - Federal employment taxes withheld or imposed from Feb. 15, 2020, to June 30, 2020
    - Sick and leave wages eligible for credits under Sections 7001 or 7003 of the CARES Act
    - Compensation of any individual employee over $100K in annual salary
  - Subtract any compensation paid to an individual employee in excess of annual salary of $100K or amounts received by any individual contractor over $100K
  - Divide by 12 to calculate average monthly payroll expense
  - Multiply average monthly payroll expenses by 2.5
  - Add the amount of an EIDL Loan made between Jan. 31 2020, and April 3, 2020, (but do not include any “advance” under an EIDL-COVID19 loan, because it does not have to be repaid)

Required Uses of the Loan Proceeds

- 75% of the proceeds must be used for payroll expenses
- Up to 25% of the proceeds can be used for mortgage interest (not principal), rent payments and utilities

Forgiveness of Loans

- Up to 100% of the loan can be forgiven
- Must maintain employee count and compensation levels shown in the application

- Up to 25% of the forgiven amount can be for payments of mortgage interest, rent and utilities (if the mortgage/lease/utility service obligation was created before Feb. 15, 2020)
- *More guidance and regulations forthcoming from SBA regarding forgiveness*

Eligible Lenders – deemed automatically eligible through the final rule itself

- Any FDIC insured depository institution or any federally insured credit union
- Certain Farm Credit Systems if they apply the Bank Secrecy Act (BSA)
- Other financing providers that meet certain financial requirements and apply the BSA

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[1]Given that independent contractors can apply separately, businesses should not include their independent contractor payments in this calculation.

[2]The treatment of independent contractors and employees is somewhat confusing in the final rule because the rule addresses the maximum loan amount for employers (whose loan amount is based on expenses for employees) and independent contractors (whose loan amount is based on their own individual receipts) in the same provision. Thus, it can be unclear whether employers should include independent contractor expenses in their calculation when you read the language about calculating the maximum loan amount. However, the final rule goes on to say, explicitly, that independent contractors “do not count for purposes of a borrower’s PPP loan calculation.” Final Rule at 11.