

Frequently Asked Questions Regarding the Paycheck Protection Program

The Paycheck Protection Program (“PPP”), created under the CARES Act and signed into law on March 27, 2020, was such a success that all \$349 billion allocated for qualified loans have been disbursed. Numerous banks report they submitted applications that remain pending. It appears likely that Congress and the White House will reach an agreement on a fourth stimulus bill this week, which will include an additional \$250 billion for PPP loan program.

Below we list a number of questions and answers that have come up since the original PPP loan program started. Gesmer Updegrave continues to be available to help you with these and other questions related to the PPP, as well as other laws and regulations pertaining to the COVID-19 pandemic.

QUESTION: *If my loan application has been submitted to my bank, yet I have not heard anything, was my application denied?*

ANSWER: No. Your application may have been approved, and your bank is waiting for funds from the Small Business Administration (“SBA”). Alternatively, your application was approved, yet the SBA is waiting for supplemental funds from Congress for distribution to qualified borrowers.

QUESTION: *Is the SBA still accepting and approving loans?*

ANSWER: Yes. The SBA expects to receive supplemental funds following the passage of pending legislation this week. Once the pending legislation is signed by the President, pending loan applications and new loan applications will be considered in the order they are received.

QUESTION: *If I have more than 500 employees, yet qualify as a small business under the Small Business Act, can I apply for a PPP loan?*

ANSWER: Yes. If a company has more than 500 employees it can obtain a PPP loan if it (i) qualifies as a “small business concern” under Section 3 of the Small Business Act, (ii) meets the SBA’s “alternative size standard” as of March 27, 2020 (tangible net worth ≤ \$15 Million, and average net income after federal taxes for the two prior years is ≤ \$5 million), or (iii) has an NAICS code beginning with 72 (accommodation and food service companies).

QUESTION: *Does my company have to qualify as an SBA “small business concern” before I can apply for a PPP loan.*

ANSWER: No.

QUESTION: *How are “payroll costs” defined?*

ANSWER: Payroll costs include all cash compensation paid to each employee. Non-cash benefits, such as contributions to a retirement plan, health insurance co-payments and state and local taxes are not “payroll costs.” Independent contractors earning wages that are reported on Form 1099 are **not** treated as employees for purposes of calculating payroll costs. Independent contractors must apply for a separate PPP loan or seek compensation through newly-expanded state unemployment programs.

QUESTION: *If some of my employees are hired through a Professional Employer Organization (“PEO”) do they qualify as a “payroll cost” for a PPP loan, and loan forgiveness?*

ANSWER: Yes. Keep detailed records on the amounts paid to each PEO employee, and notify the PEO provider that your PEO employee is covered by your PPP loan. The PEO provider cannot include your employee in its PPP loan application.

QUESTION: *Does the SBA use standard loan documents, or will my bank use its forms?*

ANSWER: Your bank may use SBA’s form loan documents, or it may use its own documents.

QUESTION: *If I laid off employees, when do I need to hire them back under the PPP loan program?*

ANSWER: Only qualified payroll costs will be used to calculate the loan amount that is forgiven. Timing of when you rehire furloughed or laid-off employees, or hire new employees will affect your calculation of

forgivable “payroll costs.” Any employee laid off or furloughed through April 26, 2020, must be rehired by the business by June 30, 2020 to satisfy the loan forgiveness requirement. Note that a “rehired” employee does not necessarily have to be the same individual as the one that was laid off; the PPP only considers headcount totals, not the individuals involved.

QUESTION: *If some employees quit, can I hire new employees to maximize the loan forgiveness benefits under the PPP program?*

ANSWER: Yes.

QUESTION: *If PPP loan proceeds are forgiven, while the IRS will not tax the discharged debt as income, will my state tax the discharged debt as income?*

ANSWER: No.

QUESTION: *If I am self-employed do I qualify for a PPP loan.*

ANSWER: Yes. If you filed or will file Form 1040 Schedule C for 2019, you qualify for a PPP loan.

QUESTION: *If I am partner in a partnership do I need to file my own PPP loan application?*

ANSWER: No. Under the PPP loan program a partner is not self-employed. Instead self-employment income of general active partners is reported as a “payroll cost” of the partnership, subject to the \$100,000 annual cap.

QUESTION: *What if I applied for and received more money than I need?*

ANSWER: You may pre-pay all or part of a PPP loan, at any time, without penalty.

QUESTION: *If I have more employees now than I did in 2019, and lay-off some during the 8 weeks after I receive the PPP loan, do I effect the amount of the loan that will be forgiven?*

ANSWER: Up to 75% of the loan amount will be forgiven for eligible payroll costs. Calculation of the amount to be forgiven will depend on your payroll costs during the 8 week period following your receipt of the loan proceeds. The amount forgiven will be reduced if the number of employees or payroll costs during the 8 week period fall more than 25% of total payroll costs during the period.

QUESTION: *If I furloughed employees, can I wait until June to hire them back, to maximize the loan amount that will be forgiven?*

ANSWER: Yes , so long as they are rehired by June 30. If you rehire furloughed employees or laid-off employees, or hire new employees, the payroll costs of the rehired/newly hired employees are included when you calculate total payroll costs for purposes of loan forgiveness.

QUESTION: *If I use independent contractors, "gig" workers or sole proprietors how are they treated under the PPP loan program?*

ANSWER: Amounts paid by a borrower to independent contractors, gig workers or sole proprietors are not eligible "payroll costs" under the PPP loan program.

Independent contractors, gig workers and sole proprietors may apply for their own PPP loans.

QUESTION: *Can I submit multiple loan applications with different banks?*

ANSWER: No. Each borrower is entitled to only one PPP loan.

QUESTION: *If I receive a PPP loan can I also take an Employee Retention Payroll Tax Credit?*

ANSWER: No. A business is entitled to receive a PPP loan or take and ERPT Credit, but not both.

QUESTION: *If I receive a PPP loan can I defer payment of payroll taxes incurred between March 27, 2020 and December 31, 2020?*

ANSWER: It depends. If part of your PPP loan is forgiven you cannot defer payroll taxes under the CARES Act. If none of your PPP loan is forgiven you can defer paying payroll taxes incurred between March 27th and December 31st in 2020.

The number of issues and questions that arise from the CARES Act and the PPP loan program can be overwhelming. Additionally, the unique facts of your business and employees may not fit squarely within in the Questions above. If you have any follow-up questions or additional concerns please call or email Joe, Aaron or Sean.

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of COVID-19 on you or your business, please contact Joe Laferrera, Aaron Kriss, or Sean Gilligan at (617) 350-6800, or email them at joe.laferrera@gesmer.com, aaron.kriss@gesmer.com, or sean.gilligan@gesmer.com.



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