

Posted on Wed, Apr 22, 2020 in KOA System News (/explore?cat_id=69), Coronavirus (COVID-19) (/explore?cat_id=273), COVID-19 Legislative Updates (/explore?cat_id=275)

New Funding for Paycheck Protection Program (PPP) and How to Maximize the Amount of Forgiveness

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Funding

As most of you know, last week the PPP program exhausted the \$349 billion provided in the CARES Act enacted in late March. With over 4,700 lending institutions participating, the program received nearly two million loan applications for approval and processing. Success and failure resulted from a number of factors, not the least of which was the sheer volume of applications as well as varying levels of review by different agencies involved in the process. Officials from the SBA were quoted as saying they had processed as much dollar value in 14 days as they had in the previous 14 years.

Fortunately, on Tuesday of this week, the Senate passed a measure that would infuse an additional \$310 billion into the popular program. The House is expected to vote on the bill on Thursday and it is certainly expected to pass. With this second opportunity developing quickly, here are some tips to best improve your chances of getting your loan application approved for this round of funding.

1. Get prepared NOW. As many have experienced, the demand for this funding was huge and at least the last round was a first come, first serve basis and the funds ran out and the SBA stopped accepting applications.
2. Talk to your banker to give them advanced notice that you intend to apply and give them a timetable when they can expect your application and ask them what documentation they need to review your application. Additionally, if you have a pending loan application, proactively communicate with your lender now in advance of the bill's signing.
3. Determine the amount of loan you are eligible for which is generally 2.5 times your average payroll. In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019. Seasonal businesses may use average payroll between February 15, 2019 and June 30, 2019.
4. Submit your payroll reports (Form 941s covering the period used to determine loan amount) with your application and a reconciliation of the payroll information to the amount of the loan applied for.
5. Also provide documentation for all other payroll related benefits including employer-paid contributions for employee's insurance premiums and retirement benefits such as 401(k) plans as well as state taxes related to payroll such as unemployment tax.
6. Your banker may also need Tax Returns for the business for 2019 or 2018, whichever was filed last.
7. Stay in close communication with your banker regarding the status of your application review to ensure they have everything they need to review the application for submittal to the SBA.
8. Also, stay in close communication with your banker regarding the status of the SBA's review process. Generally, this should not exceed three business days and in many cases was much shorter in the first phase of the PPP process.

Good luck with this stage of the process.

Forgiveness

If you have secured a Paycheck Protection Program loan or are in the process of securing one there are important considerations to insure you can get the maximum amount possible forgiven. (Keep in mind the purpose of the PPP was to maintain payroll for the employees in place prior to the loan disbursement. All the rules favor businesses that can accomplish that and penalize those who can't).

The expenses used in calculating the loan for your business include: gross payroll and benefits including employer-paid contributions for employee's insurance premiums and retirement benefits such as 401(k) plans as well as state taxes related to payroll such as unemployment tax. The loan amount includes 2.5 times the average monthly total for these items.

After the loan is secured and funding is received, for the next 8 weeks the business needs to accumulate those expenses incurred as well as any mortgage interest (as long as the mortgage was in place before February 15, 2020), rent (as long as the lease agreement was in effect before February 15, 2020) and utilities (as long as the service began before February 15, 2020). These expenses can be utilized to achieve the maximum forgiveness of the loan amount.

The instructions and procedures for how these expenses will be documented and calculated are not completely defined but here are some steps that we know will be critical to maximizing forgiveness:

9. **The 75% rule (Make sure 75% of the loan amount is used for payroll costs)**

At least 75% of the loan must be used for payroll costs (the same costs that were defined as payroll costs in establishing the loan amount). If the business is unable to spend the full loan amount in the 8 weeks then the amount forgiven would be reduced accordingly. (Example: If the business received a loan for \$100,000 but spent a total of \$80,000 on payroll and the other acceptable expenses for the forgiveness calculation, the forgiven portion would be \$80,000 as long as at least \$60,000 of the spend was for payroll costs). The remaining “unforgiven” amount would stay on the loan with payment terms of 1% and a 2-year payback. There are no prepayment penalties or fees for the loan.

In the event payroll is less than 75% of the amount the business is attempting to get forgiven, the total forgivable amount would be reduced until 75% of the total is for payroll costs. In the example above, if only \$45,000 was spent during the 8 weeks for payroll costs, the maximum expense that could be forgiven would be \$60,000 of the \$100,000 loan.

10. **Staffing requirements (Maintain at least the same staff size for the 8 weeks vs prior period)**

The forgiveness total will be reduced if the average number of full-time equivalent (FTE) employees during the 8-week period is less than the average FTE account during the previous measurement period (two specific periods are defined. The business can use whichever is most favorable to them in the calculation).

11. Payroll requirements (Maintain at least 75% of total wages for each employee)

If the employee's pay over the 8 weeks is less than 75% of the pay they received during the most recent quarter in which they were employed, the eligible amount for forgiveness will be reduced by the difference between their current pay and 75% of the original pay.

12. Rehiring grace period (If you have laid off, furloughed or reduced pay by more than 25%

You can rehire any staff that you laid off, furloughed or reduced pay by more than 25% to avoid a reduction in the forgiven amount as long as you rehire them and reinstate their pay by June 30th. If this is done properly, you will maximize the forgiveness and maintain your payroll at full pay for the 8-week period.

Forgiveness Process: Maintain good records and compile them properly for the lender

After the eight-week period is complete applications for loan forgiveness will be accepted and processed by your lender. They will provide you with instructions on how to apply. Applications will be processed after June 30th to ensure all rehiring grace periods are considered.

After the application is submitted, your lender is required by law to provide a response within 60 days.

The following documents will be required to provide with your forgiveness application as well as any additional documentation your lender requires:

- Documents verifying the number of full-time equivalent employees on payroll and their pay rates for the periods used to verify that you met the staffing and pay requirements:
 - Payroll reports
 - Payroll tax filings (Form 941)
 - Unemployment insurance filings for your state

- Documents verifying any retirement and health insurance contributions
- Documents verifying eligible interest, rent and utility payments such as cancelled checks, receipts or account statements.



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