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CARES Act: Three key considerations when applying for the Paycheck Protection Program

Employment, COVID-19, Articles / March 30, 2020 / Richard L. Hathaway

Updated: April 1, 2020

According to the Small Business Administration's ("SBA") Office of Advocacy, small businesses create two-thirds of new jobs in the United States and are "the lifeblood of the U.S. economy." And so it seems fitting that the Coronavirus Aid, Relief, and Economic Security ("CARES") Act provided for $376 billion in emergency funding for small businesses. In addition to emergency grants and existing loan relief, the largest portion of the emergency funding, some $349 billion, is allocated to the Paycheck Protection Program. The SBA is administering the Paycheck Protection Program and CARES authorizes the SBA to provide federally backed loans to businesses with fewer than 500 employees ("small business") who were in operation on February 15, 2020.

These Paycheck Protection Program loans have numerous advantages. There is no prepayment penalty and there are no collateral or personal guarantees required. The interest rate for a Paycheck Protection Program loan is capped at 4%. Payments of principal and interest can be deferred for six months to one year. Due to the importance of small business to the US economy, and with so many small businesses hobbled by restrictions deemed necessary to stop the spread of the Coronavirus, the Paycheck Protection Program is aimed at blunting some of the economic impact. As such, for a significant portion of the loan amount, small businesses may obtain forgiveness and they will not have to report that forgiveness as taxable income.

First Consideration:

What businesses are qualified? If your small business had employees or independent contractors to whom it paid salaries, wages and payroll taxes and was in operation on February 15, 2020, then you are off to a good start. The purpose of the Paycheck Protection Program is to allow small businesses to weather these uncertain economic conditions presented by the Coronavirus. As such, the small business will have to certify that the uncertain current economic conditions created by the Coronavirus necessitate obtaining the Paycheck Protection Program loan. The small business will have to indicate that the funds from the loan will be used to make payroll to retain workers or make mortgage, lease or utility payments. Small businesses that currently do not have an SBA (7)(a) loan or Economic Disaster Injury Loan pending for the same purpose as the Paycheck Protection Program loan may also apply.

Second Consideration:

How much of a loan can my small business apply for and what are the allowed uses of Paycheck Protection Program funds? Qualifying small businesses may obtain up to 2.5 times its average monthly payroll costs up to $10 million. To calculate this amount, the business's average total monthly payroll costs incurred during the one-year period before the date of the loan are considered. The Paycheck Protection Program excludes payroll and income taxes from this calculation. The program also excludes individual employees with compensation of more than $100,000 and those employees whose principal residence is outside of the United States. Because the Families First Coronavirus Response Act gives businesses a credit for qualified sick leave or family leave wages, these too are excluded from the calculation. A small business that obtains Paycheck Protection Program funds can use them for employee salaries and wages, group health care benefits, and rent and utility payments. A small business may also use these proceeds to pay interest on a mortgage or interest payments on any other debt obligations it incurred before February 25, 2020.

Third Consideration:

How can I get my Paycheck Protection Program loan forgiven? All loans received through this program are eligible for loan forgiveness. The amount of forgiveness, however, is a bit of a moving target. Loan forgiveness is capped at the principal amount of the loan. The amount of loan forgiveness may be equal to the business's costs for the eight (8) weeks following the origination date of the Paycheck Protection Program loan. The costs considered when determining the amount that is eligible for forgiveness include payroll, rent, utilities, transportation, and interest on the business's real or personal property obligations. To qualify, these costs must come from obligations that began before February 15, 2020. Once calculated, forgiveness is also subject to reduction. The reduction will be the amount of the small business's decline in wages or salary. To avoid this reduction in loan forgiveness, a small business that has a decline in wages or salary between February 15, 2020, and April 26, 2020, must return to pre-decline levels by June 30, 2020.

Because the Paycheck Protection Program has the largest allocation of CARES funding, we expect the SBA to see a lot of applications for this program. The SBA has indicated that it will provide additional guidance in connection with administering the CARES Act. Participation in some Coronavirus relief programs will result in the exclusion of participating in other programs. As such, careful consideration upfront, combined with timely action, will go a long way to preserving your small business and its employees.

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