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WHAT TO DO AFTER RECEIVING A PPP LOAN

Over \$349 billion in Paycheck Protection Program (“PPP”) loans have been originated by lenders across the U.S. Many businesses have received their PPP loan proceeds, and it is important that businesses carefully document the use of funds to maximize loan forgiveness. To maximize forgiveness, employers should do the following:

1. Use PPP funds exclusively for authorized expenses

The CARES Act requires that PPP loan recipients certify that the funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments. Knowingly using funds for unauthorized purposes could lead to charges of fraud.

2. Use as much of the proceeds as possible on forgivable expenses, and carefully document expenditures.

The full PPP loan balance may be forgiven if the proceeds are used for a specific set of costs during the eight-week period. Employers should work with their tax professionals to maximize the forgivable amount of the loan. Borrowers should carefully document the use and allocation of the PPP funds. Borrowers might want to segregate PPP funds into a separate account that is only used to pay forgivable expenses. Forgivable expenses include expenditures during the eight-week period for:

- Payroll costs;
- Interest on mortgage obligations incurred before February 15, 2020;
- Rent payments on leases dated before February 15, 2020; and
- Utility payments under service agreements dated before February 15, 2020.

The SBA has announced that no more than 25% of the loan forgiveness can be attributable to non-payroll costs. Best practices would be to use the money first and to the greatest extent possible for payroll costs. Payroll costs are strictly for payments to W-2 employees and are calculated in the same manner that was used in the borrower’s application. Payments to independent contractors may not be included as payroll costs.

3. Document COVID-19 related losses and create forecasts

Borrowers are required to certify that “current economic uncertainty makes this loan request necessary to support ongoing operations.” Borrowers should document, to the fullest extent possible, all losses attributable to COVID-19. This can take the form of forecasts, previous earnings for similar periods, decreased productivity, etc. Carefully documenting losses and creating forecasts of future earnings can be useful to support the certification. The SBA released supplemental guidance on April 23, 2020 highlighting this requirement. Borrowers who applied for a loan before the guidance but repay the balance by May 7, 2020 will be deemed to have made the certification in good faith.

For more information on this program, and other COVID-19 related topics, please review our COVID-19 Resources page here: <https://www.gill-law.com/covid-19-resources/#>