PPP Loan Approved – Now What?

Apr 13 2020

Posted By: Steven M. Szymanski

Practice Area: Business and Corporate Law

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"). The Paycheck Protection Program ("PPP") is an integral part of the CARES Act and currently provides almost $350 billion to eligible businesses, nonprofit organizations, and veteran organizations. These funds are to provide financial assistance to qualifying entities in response to economic difficulties caused from the COVID-19 pandemic.

Lenders have been accepting PPP loan applications since April 3, 2020, and loan applicants are starting to receive their approvals from lenders. This *Legal Update* provides information that applicants should be mindful of after receiving their PPP loan proceeds.

Allowable Uses for PPP Loan Proceeds
The PPP loan application requires an applicant to certify that the funds will be used for the purposes allowed under the CARES Act. Misuse of PPP loan funds may lead the loan applicant to charges of fraud. One of the attractive features of a PPP loan is its non-recourse liability to owners of the loan recipient. However, if a PPP loan is used for purposes other than allowable purposes, the loan is converted into a recourse liability, and the Small Business Administration may seek recovery from the loan recipient's shareholders, members or partners for any portion of the PPP loan that is unpaid and used for unauthorized purposes. Last, the loan recipient will not qualify for the loan forgiveness.

Maximize Loan Forgiveness of PPP Loan Proceeds
A loan recipient is eligible for loan forgiveness if the loan proceeds are used for allowable purposes during an 8-week period following loan origination. Loan recipients should be documenting their allowable use and allocation of the funds. Loan recipients may choose to segregate loan funds in a separate banking account from other funds of the loan recipient in order to trace the use of loan proceeds to allowable purposes.

In addition to using PPP loan proceeds for allowable purposes, loan recipients need to be cognizant of several other requirements in order to ensure maximum loan forgiveness. Seventy-five percent of PPP loan funds must be used strictly for payroll costs (as defined in the CARES Act). The remaining loan funds may be used for allowable non-payroll costs (e.g., covered rent, covered mortgage interest payments and covered utility expenses (all as defined in the CARES Act)).

Loan recipients are also required to maintain certain employee head count and compensation levels during the 8-week period following loan origination. Failure to satisfy these levels results in a reduction in loan forgiveness. If a loan recipient laid off or furloughed employees prior to applying for a PPP loan, the loan recipient may rehire its employees in order to satisfy the employee head count and compensation levels for loan forgiveness.

Loan recipients should consider having a plan in place prior to receiving loan funds to satisfy the foregoing requirements in order to maximize loan forgiveness.

Additional Opportunities under the CARES Act
Aside from the PPP loan, the CARES Act provides tax savings opportunities. The CARES Act provides: (i) increased deductions for net operating losses; (ii) permits the carryback of net operating losses from 2018, 2019, and 2020 to each of the five taxable years preceding the taxable year of such loss; (iii) increases the interest limit businesses can deduct to 50%; and (iv) accelerates the ability to claim alternative minimum tax credits. These opportunities should be reviewed to determine their applicability.