

April 23, 2020

On March 29, 2020, President Trump signed into law the Coronavirus Aid, Relief, Economic Security Act (CARES) that provided over \$2 trillion in relief to businesses, individuals, states, municipalities and health care providers. Here at Day Seckler, we have attempted to provide what we believe are the most important provisions to our clients, both businesses and individuals.

**This memo today will address the CARES Act's loan forgiveness program for the Paycheck Protection Program. The Small Business Administration is supposed to issue additional guidance later this month, which we will bring to you. But, for now, we know many of you have received the PPP loan and we want to make you aware of the current provisions:**

Currently, the PPP loan is designed to be income tax free and the expenses paid by the loan, tax deductible as long as the loan is used for its intended purposes. Since this seems to be unbelievable, it is possible that this may be changed.

#### **Allowable Uses of the PPP Loan:**

##### **1. Payroll Costs**

- a. Salaries, wages, commissions, tips. Capped at \$100,000 annually per covered individual (partner, sole proprietor, independent contractor or employee) or \$15,384.61 for the 8-week period.
- b. Employee benefits including costs for vacation, parental, family, medical or sick leave; allowances for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit. Benefits are capped at \$25,000 per covered individual.
- c. State and local taxes assessed on compensation; and
- d. Excludes FICA/Medicare taxes paid by the employer.
- e. Most payroll companies have the ability to track payroll for PPP purposes. Use of their codes will assist you in preparing the necessary reports for the forgiveness documentation.

##### **2. Interest on mortgage obligations incurred before February 15, 2020**

- a. Mortgage can be on real or personal property
- b. Does not include any principal payments

##### **3. Rent on a lease obligation incurred before February 15, 2020.**

##### **4. Utility payments for services in place before February 15, 2020. Utility payments include service for the distribution of electricity, gas, water, transportation, telephone or internet.**

#### **Rules of Forgiveness:**

1. The Borrower must pay at least 75% of the amounts received for payroll costs during the 8-week period subsequent to receiving the loan.
2. The 8-week period commences the day the money is deposited in your bank account.



3. The average number of full-time employees per month must be maintained or increased from the covered period. The covered period can be either:
  - a. The period beginning February 15, 2019 and ending on June 30, 2019; or
  - b. The period beginning on January 1, 2020 and ending on February 29, 2020.
  - c. Any reduction in employees in the covered period will lead to reduced loan forgiveness.
  - d. Full time is defined as 30 hours per week.
  - e. If you hire employees, it can be new employees. It does not have to those that were previously terminated.
4. Each covered individual must receive at least 75% of their compensation that was used to calculate the PPP loan. And, covered individuals may not receive more than 125% of their compensation used in the calculation.
5. If you reduced your payroll at the beginning of the period (which we believe is February 15, 2020) but have restored them by June 30, 2020, then you should be fine. This provision is still unclear and developing.

### **Timing of Forgiveness:**

1. An application should be submitted to your Bank documenting the number of full-time equivalent covered individuals on payroll and their payroll rate for the 8-week period subsequent to the receipt of the loan, including:
  - a. Payroll tax reports filed with the IRS; and
  - b. State income, payroll and unemployment insurance filings.
2. Documentation, including cancelled checks, payment receipts, transcript of accounts, or other documents verifying payments on mortgage obligations, lease obligations and utility payment.
3. A certification signed by an authorized representative of the Borrower stating that the:
  - a. Documentation provided is true and accurate and;
  - b. The amount for which forgiveness is requested was used to retain employees, make interest payments on mortgage obligations, rent obligations or utility payments and;
  - c. You have not and will not receive another loan under this program before December 31, 2020.
4. Any other documents required by your Lender. Your Lender will make the forgiveness decision, so please talk to them if you have any specific questions.

Applications should be submitted within 60 days after the expiration of the 8-week period and the Lender is supposed to make a decision with 60 days of receipt of the application.

### **What Happens if My Loan is not Forgiven?**

1. Any portion of the loan not forgiven will be converted to a 2-year term loan with monthly principal and interest payments due on the first day of the 7<sup>th</sup> month after the loan is received.
2. Interest is at 1%.

**We have included an excel worksheet to assist you in calculating the amount of your loan forgiveness.**

As we mentioned earlier, we expect the SBA to issue additional guidance later this month which we will send to you, but, for now, this is the interim guidance as provided by the SBA.

Again, if you have any specific questions, please call us at 845-765-0705. We hope you and your families are safe.

**The Day Seckler Team**