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The Paycheck Protection Program (PPP) and Retirement Plans

From RPS Consulting Services
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The Coronavirus Aid, Relief, and Economic Securities Act ("CARES Act") was signed into law by President Trump on March 27, 2020. This original bill established $349 billion in funding for PPP loans, but this was quickly exhausted. An additional $310 billion in funding was approved on 4/23/2020.

This PPP program is designed to assist businesses with fewer than 500 employees. All the loan proceeds, if used as prescribed by the CARES Act, the Small Business Administration (SBA) and the PPP program, may be forgiven.

Please note, anyone applying for a PPP loan should consult with their CPA regarding the application process and the forgiveness calculations. What follows is a brief and simplified explanation.

The Loan Amount:
The loan amount is 2.5 times your average monthly payroll costs for your prior year.

"Payroll Costs" include:

- Wages, commissions, salary, or similar compensation to an employee or independent contractor,
- Payment of a cash tip or equivalent,
- Payment for vacation, parental, family, medical or sick leave
- Allowance for dismissal or separation,
- Payment for group health care benefits, including premiums,
- Payment of any retirement benefits, and
- Payment of state or local tax assessed on the compensation of employees

Excluded from the definition of "Payroll Costs" are:

- The compensation of any individual employee in excess of an annual salary of $100,000
- Any compensation of an employee whose principal place of residence is outside the U.S., or

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- Any qualified sick leave or family medical leave for which a credit is allowed under the new Coronavirus Relief Act.

What Can the Proceeds Be Used For?

- The above-listed payroll costs
- Rent (including rent under a lease agreement)
- Mortgage payments
- Utilities
- Any other debt obligations that were incurred before the covered period (3/1/2020 – 12/31/2020)

Can I use the PPP loan proceeds to fund my employer retirement plan contributions?

Yes. The Small Business Administration (SBA) in consultation with the Department of Treasury issued a series of Q&As on April 6, 2020 in which they stated that "employer contributions to defined-benefit or defined-contribution retirement plans" are a permitted use of the PPP loan and that such contributions are not part of the $100,000 cap (described above) that limits an individual's compensation to $100,000.

Must this retirement contribution be only for the 2020 plan year?

No, the retirement contribution can be for the 2019 and/or 2020 plan year.

Must this retirement contribution be a mandatory contribution (such as a required safe harbor, defined benefit, or cash balance contribution) or can it be a discretionary contribution (such as a profit sharing or discretionary matching contribution)?

The Q&A issued on April 6th makes no distinction between a mandatory or a discretionary employer contribution. Presumably, both are permitted uses of the PPP loan.

Must the employer contribution been "accrued" under the retirement plan or can I prefund future retirement contributions that have not yet been accrued?

The SBA did not provide any guidance on this matter, so it is best to only fund accrued contributions. Certainly, all employer contributions for the 2019 plan year have already been accrued under the terms of the retirement plan. For example, a profit sharing or cash balance plan may require that only those who worked at least 1,000 hours in 2019 are eligible to receive an

allocation of any employer contribution. Anyone that worked 1,000 hours in 2019 has accrued a benefit if an employer contribution is made for the 2019 plan year. Therefore, it appears that such a contribution can be part of the PPP use and forgiveness program if contributed during the 8-week period beginning on the date the PPP loan is received.

Likewise, many retirement plans have already accrued 2020 benefits. For example, 401(k) plans that declared safe harbor status for 2020 are required to make employer safe harbor contributions. Therefore, employer safe harbor contributions attributable to the 8-week period can be part of the PPP use and forgiveness program.

Also, in any plan year, many defined benefit and cash balance plans accrue new benefits that must be funded once 1,000 hours have been worked. (Some plans have no hourly-accrual requirement or require less than 1,000 hours to accrue a benefit.) It appears that such contributions (even those that accrued in 2020) can be part of the PPP use and forgiveness program if contributed during the 8-week period.

Please note that if you have frozen your defined benefit or cash balance plan or suspended your 401(k) safe harbor provisions for the 2020 plan year, your retirement plan probably has not accrued new, 2020 benefits. (The exception would be retirement plans which are top heavy and required to make a top heavy contribution.) If you have frozen your plan and wish to unfreeze it, please contact your RPS plan analyst.

For the PPP loan to be forgiven at least 75% of the loan proceeds must be used for "payroll costs". Are the above retirement contributions included in this calculation?

Yes, the definition of "payroll costs" includes these retirement contributions and therefore they are included in the calculation of the original loan amount and the forgiveness calculation.

Note that the "forgiveness calculation" also includes other items: i.e., not more than 25% of the PPP can be used for non-payroll purposes, such as utilities, rent or mortgages. The purpose of the PPP loan is to keep your employees employed. Therefore, the forgiveness calculation also compares the monthly average number of Full-Time Equivalent Employees (FTE's)

during the 8-week period beginning on the date you received the PPP loan vs. the average number of FTE's per month from 1/1/2020 – 2/29/2020 or 2/15/2019 – 6/30/2019.

PLEASE CONSULT WITH YOUR CPA REGARDING THE PPP PROGRAM AND THE FORGIVENESS CALCULATION.

Am I taxed on the forgiven portion of the PPP loan?

No, unlike other forgiven indebtedness, the forgiven PPP loan is not taxable income to you.

If I receive a PPP loan and all or a portion is forgiven, can I still claim a deduction for this contribution?

At this time, the employer contribution is still a deductible expense even though funded through the PPP loan and thereafter forgiven. However, please consult with your CPA on this matter since it is unlikely that the IRS will allow such "double dipping".

How do I obtain a PPP loan?

Please check with your CPA and your bank. Note that the additional funding is expected to be depleted quickly.

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