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SBA PPP Loan Applications for Hotels

April 6, 2020

Applying for a PPP (Paycheck Protection Program) loan for your hotel? First, reach out to your lender to confirm that it is accepting applications and submitting them to the Small Business Administration (SBA) on the same day, rather than holding them. Then, as you complete the Borrower Application Form (released by the SBA late on April 2nd), see below for guidance on some key questions.

Eligible uses of the PPP loans:

- payroll costs, which specifically include:
  - salary, wages, commissions or similar compensation, up to an annual salary of $100,000 per employee
  - cash tips or the equivalent
  - payment for vacation, parental, family, medical or sick leave
  - allowance for separation or dismissal
  - payment for the provision of employee benefits consisting of group health care coverage including insurance premiums, and retirement
  - payment of state and local taxes assessed on compensation of employees
- mortgage interest payments (but not mortgage prepayments or principal payments)
- rent payments
- utility payments
- interest payments on any other debt obligations that were incurred before February 15, 2020

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refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020

Note, however, that certain costs are excluded from payroll costs. We recommend reviewing pages 8 – 11 of the Interim Final Rule for Applicable Affiliation Rules to confirm that the proper payroll cost methodology has been followed. Also note that only payroll costs, interest payments, rent payments, and utility payments may be forgiven. Finally, note that at least 75% of the loan must be used toward payroll expenses.

1. **Who should apply for the loan – the hotel management company or the hotel owner?**

Within the CARES Act, it is not clear whether Congress intended the loan recipient to be the hotel manager, who is commonly the employer of the hotel employees, or the hotel owner, who commonly bears the cost of payroll through the terms of the hotel management agreement. However, the eligible uses of the PPP loans (see above) are in most cases costs that the hotel owner is required to pay, either directly or through the terms of the hotel management agreement; accordingly, common sense would dictate that the hotel owner can apply as it has the payment obligations for these costs. We note that Hilton has taken this position as well, in a communication to owners of Hilton-managed hotels encouraging the hotel owners to apply for PPP loans directly. Where the hotel owner is not the employer of the hotel personnel, a hotel owner applying for a PPP loan may want to include an explanatory note that, although payroll is reported under one EIN (the employer's), the applicant is contractually obligated to pay the payroll costs.

1. **The hotel is owned through a REIT structure - which entity should apply for the loan?**

This complicates the situation described in #1 above, as frequently the real-estate owning entity (the Property Company or PropCo) is responsible for mortgage payments while the taxable REIT subsidiary that is the tenant (the Operating Company or the OpCo) is responsible for paying rent (to the OpCo), utilities and payroll costs (through the contractual obligations in the management agreement). As the OpCo is responsible for paying the bulk of the costs that are eligible uses for the PPP loan (and the rent is likely flowing through to the PropCo to pay the mortgage interest), our recommendation is to have the OpCo apply for the loan.

**Consent for the PPP loan may be required from existing lenders to the applicant/borrower; loan documents should be carefully reviewed with counsel.

1. **Applications for hotels can be submitted starting Friday, April 3, 2020; is there a benefit to submitting the application as early as possible?**

The Interim Final Rule for Applicable Affiliation Rules issued by the SBA on April 2nd state clearly that the loans will be made on a "first-come, first-served" basis. In addition, the guidelines issued by the Department of the Treasury on April 2ndrecommend that eligible borrowers apply quickly as there is a funding cap ($349 billion) and lenders will need time to process the loans.

1. **If I have laid off employees and now can re-hire them with this loan, do I have to re-hire them right away?**

The terms of the program incentivize business owners to re-hire as soon as possible (which is consistent with the goals of the CARES Act). Although the entire loan does not have to be spent in any particular time-frame, only the amounts spent in the eight (8) weeks after the loan is issued will be forgiven. Furthermore, full loan forgiveness is conditioned on maintaining employee counts and, to this end, allows for laid off employees to be rehired to achieve full forgiveness. Finally, new in the SBA regulations from April 2nd, at least 75% of the loan must be used for payroll costs (see #5.d below), which combines with the forgiveness provisions to strongly encourage rehiring.

1. **The Small Business Administration issued regulations for the PPP loans at the end of the day on April 2nd; what are the key changes from what is in the Act?**

- The interest rate on the PPP loans is set at 1.0% (the Act allowed the interest rate to be as high as 4.0% but early guidance was indicating that the interest rate would be 0.5%)
- The maturity date for each loan will be 2 years from issuance of the loan (the Act allowed for a maximum maturity of 10 years)
- Deferral of principal and interest payments on the loan will end after 6 months (the Act authorized the Administrator to set the deferral period for up to one year after issuance)
- At least 75% of the loan proceeds must be used for payroll costs (The Act allows for loan proceeds to be used for all the eligible purposes, but the SBA has determined, in Section 2.r of the SBA regulations, that a requirement to use a "substantial portion" of the loan proceeds for payroll costs is consistent with Congress' goal of keeping workers paid and employed)
- No more than 25% of the loan forgiveness may be attributable to non-payroll costs (the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and payments of mortgage interest, rent and utilities)

More questions? Call any of the members of our Coronavirus Task Force.