The Many Iterations of the Paycheck Protection Program

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According to the Greek philosopher, Heraclitus, “change is the only constant in life.” Never has this been truer than in these tumultuous times. This new way of life has forced us to change our daily activities. Whether it be working from home, holding meetings in the “cloud” or trying to make sure our clients feel comfortable in our new “sterile” workplaces – this is our new normal. States are beginning to reopen; the kids are out of school and summer is upon us. Employees throughout the nation must now adjust to all of these changes, including the many iterations of the landmark legislation known as the Paycheck Protection Program. This constantly evolving piece of legislation requires extreme attention to detail, accurate accounting and expert guidance. The goal of all of us small businesses is to turn this paycheck protection loan into a completely forgivable paycheck protection grant.

The PPP started out as a $349 billion bailout for small businesses, with the goal of keeping people employed and off of unemployment. The initial round of funding was exhausted in only 13 days, leaving employers and Congress scrambling to find a solution. The road to the solution has been rocky, at best, but the legislation has evolved to become more friendly to employers each day. Additional funding was made available, clarity on the rules around the program has been issued, and the “forgiveness” parameters have been widened.

The speed at which the original legislation was rolled out and the uncertainty surrounding the program created a feeling that small employers were not only handcuffed by not knowing the rules, but also blindfolded, as most were given funds and expected to spend them with little to no guidance. The Small Business Administration (SBA) was left having to clarify items as the original “rules” were murky and unclear, leaving employers to their own devices, attempting to spend funds appropriately.

With change being constant, the Paycheck Protection Program has gone through a third iteration, what’s known as the Paycheck Protection Program Flexibility Act. This changed the original parameters of this forgiveness loan in a way that was more favorable for small employers, sole proprietors and independent contractors. The way the law was initially written, employers had a staggering eight weeks to use these funds and they had to spend at least 75 percent of these funds on payroll. Industries like restaurants, retail and some professional service firms exhausted these funds quickly without being able to reopen and generate revenue. This became problematic, so Congress had to place a fix. They did this by extending the forgiveness period to 24 weeks and allowing employers to spend only 60 percent on payroll purposes. This provides 187 days of relief (as opposed to 56 days) and extended the time which employers can be strategic on how they can best utilize the funds properly to maintain staffing levels and remain in business.

Some key highlights of the Paycheck Protection Program Flexibility act include:

1. Extending the maturity to 5 years for all loans made after the bill is enacted.
2. Existing PPP loans may be modified at the agreement of both lender and borrower.
3. Changing the *restrictions* on Use of Proceeds from 75/25 to 60/40 for payroll and non-payroll expenses. Borrowers must use 60% of PPP loan funds for payroll costs. As of now, Forgiveness is dependent upon at least 60% being used for payroll costs.
4. Extending the 8-week covered period to the earlier of 24 weeks or Dec. 2020. Existing borrowers may not choose any other covered period; they must choose either 8 weeks or 24 weeks as their applicable covered period.
5. Extending the deferral period on principal and interest payments. No payment is due until forgiveness determination is granted by SBA. The Act outlines that the deferral period will end on the date that the lender receives forgiveness payment from SBA.
6. The Act outlines rules for Forgiveness cutbacks. Borrowers are allowed to include in their FTE count employees terminated for cause or for whom an offer to rehire was made but refused. The Act also allows borrowers to avoid forgiveness cutback if they can document an inability to return to previous levels of business activity due to the need to comply with Health and Human Services, Centers for Disease Control or Occupational Safety and Health Administration requirements or guidance.
7. Allowing for payroll tax deferment for PPP recipients

While we have continued clarity on the PPP, we have a few recommendations for businesses to maximize forgiveness:

1. Open a separate bank account for the PPP funds. This way you can ensure you do not comingle funds. Get a check book for this account and use these checks to reimburse your forgivable expenses.
2. Calculate your payroll each pay period using gross amounts. You can also add the employer portion of state and local taxes to this amount. Then, write a check to the total amount to your operating account to reimburse your payroll funds.
3. Keep a copy of all invoices for payroll related expenditures: Health insurance invoices, 401k matching statements, payroll reports.
4. Pay for all non-payroll related items (rent, mortgage interest, utilities) using the checks from your PPP checking account or, similar to your payroll practice, you can simply reimburse your operating account for these expenditures using your PPP checking account checks. Keep a copy of all canceled checks to match all invoices.
5. About two weeks before your forgiveness period is exhausted, contact your banker or bank to have them review your spend, prior to submitting your application for forgiveness.
6. Once the final PPP Forgiveness Application is issued by the SBA, compile all of the items from 2, 3 and 4 above and submit to your banker for forgiveness.

One final recommendation is to join a PPP Advisory Program with your local CPA or law firm who specializes in small business items. PPP loan recipients need an advocate on their side interpreting the rules and providing guidance on the program. At Sparks Law, we developed a Paycheck Protection Advisory Program, to provide the one thing small businesses needed most - clarity. We saw the need for advice on the program logistics and we knew that employers didn’t speak the legalese in which the law was written. We began with informative webinars and moved to daily updates on the program. Most businesses want to focus on running their business, not dealing with confusing laws that put their company in jeopardy. Our program ensures our clients are in the know on exactly how to use the funds appropriately to maximize forgiveness.

In addition to clarity and a bit more peace of mind, we have taken the step of developing a spreadsheet to help employers track their expenses properly to maximize forgiveness. As a small business, it’s difficult enough to manage your existing books. Having the additional tracking that the payroll protection program requires is an added burden that we want to ease for our clients. It is our hope that this excel sheet will make things a bit easier for employers so they can maximize forgiveness and focus on what’s most important, running their business. To request the spreadsheet, email ppp@sparkslawpractice.com.

While it’s true that the only constant in the world is change, we hope to be your constant in these turbulent times so that when change presents itself you will be ready.