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Happy Tuesday! Late last night the Department of Treasury and the Small Business Administration (SBA) released more information about the Paycheck Protection Program (PPP) under the CARES Act. Today's FAQs focus on this topic and address borrower and lender questions about PPP loans. Additionally, we have attached the document released by the SBA.

Q: Looking at the SBA's website, I see that I can apply for an Economic Injury Disaster Loan (EIDL). Is that the same as a PPP loan? If I've already received an EIDL loan, does that mean that I can't receive a PPP loan?

A: While both loans are authorized by Section 7(a) of the SBA (as amended by the CARES Act) and are meant to help businesses hurt by the COVID-19 pandemic, an EIDL is not the same as a PPP loan in many key areas.

For example, their purposes are different. PPP loans are primarily meant to help businesses with "payroll costs," which includes certain wages, benefits, and state and local taxes, as well as to help with payments on mortgage interest, rent, utilities, and interest on pre-existing loans. EIDLs, on the other hand, are meant to provide working capital and can be used to pay fixed debts, accounts payable, and other similar bills, as well as the items covered under PPP loans.

Their covered periods and loan caps are different. COVID-19 EIDLs are available for economic injuries that occurred between January 31, 2020 and December 31, 2020 and are capped at $2,000,000, while PPP loans only cover costs incurred from February 15, 2020 through June 30, 2020 and are capped at the lesser of 2.5 times the average monthly total of "payroll costs" or $10,000,000.

HOWEVER, the biggest difference between the two is that, under certain conditions, some (or all) of the PPP loan is forgivable while EIDLs are not forgivable (although eligible applicants for an EIDL can receive a $10,000 emergency grant within three days of application). The amount of a PPP loan that is forgivable may not be comprised of more than 25% of non-payroll (but otherwise qualifying) costs. Such costs would include certain qualifying payments for rent, utilities, and mortgage interest. And the amount that is eligible for forgiveness is generally reduced if the employer reduces headcount or reduces an employee's total salary or wages. **EIDLs have no such provisions for forgiveness.**

So, what happens if you need a PPP loan but have already received an EIDL? If you received an EIDL loan between January 31, 2020 and April 3, 2020, you can still apply for and receive a PPP loan. To prevent "double dipping," EIDL funds cannot be used for "payroll costs" or other PPP allowable uses if you want to qualify for both. **HOWEVER**, even if you used some of the EIDL's funds for PPP purposes, you may still be able to "refinance" those amounts into the PPP loan during the application process and then be able to seek forgiveness on certain of the PPP loan proceeds (because the qualifying costs incurred during the life of the EIDL would now relate to a PPP loan versus an EIDL).

Q: I am in the PEO and applying for a PPP and my lender is requiring me to provide a copy of Forms 941. What do I do?

A: We are happy to provide you a letter from the President of National Association of Professional Employer Organizations (NAPEO) confirming that you do not need a copy of Forms 941. Contact your HR Manager if you would like the letter. You may also look at number 10 in the Treasury's

FAQ. They specifically recognized PEOs and have stated that the lender should accept a statement from the payroll provider documenting the amount of wages and payroll taxes.

Q: Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?

A: No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

Q: The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of $100,000. Does that exclusion apply to all employee benefits of monetary value?

A: No. The exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

Example 1: Joe has $145k of annual gross salary. He participates in none of the employer's benefit programs. Joe's total annual compensation is $145k.

- PPP payroll costs = $100k salary (due to the cap)

Example 2: Suzie also has total annual compensation of $145k. Her annual cash salary is $120k gross. Additionally, her employer makes a $15k nonelective employer contribution to her 401(k) account, and her employer pays 100% of her health insurance premium at a cost of $10k.

- PPP payroll costs = $100k (due to the cap) + $15k nonelective 401(k) employer contribution + $10k employer premium subsidy for group health plan coverage = $125k