

Labor and Employment Alert: PPP Update: The Regulation Relating to Loan Forgiveness

May 27, 2020 – Shortly after the Small Business Administration (SBA) issued the Paycheck Protection Program (PPP) loan forgiveness application form, it issued the [regulation relating to loan forgiveness](#). Here are the main takeaways from the regulation that we learned in addition to what was provided for in the loan forgiveness application form:

The Forgiveness Process

- At least 75% of the loan forgiveness amount must be for payroll costs.
- For loans that are not reviewed by the SBA prior to the lender forgiveness decision, the lender will have 60 days from receipt of a loan forgiveness application to issue its forgiveness decision to the SBA. The lender will be responsible to notify the borrower of the forgiveness amount. Any amount not forgiven must be repaid by the borrower on or before the two-year maturity of the loan.

Forgiveness Reduction

- Employers will not lose forgiveness for employees whom are offered rehire, or who are offered restoration of an hours reduction at the same rate of pay, even if the employee does not accept the offer. Employers must document the offer to the employee and the employee's rejection of same.
- Employers will be required to inform the state unemployment insurance office of the employee's rejected offer of reemployment within 30 days of rejection of the offer (more guidance is expected on this new item).
- Employers that restore, by June 30, 2020, any reduction in FTEs that occurred between February 15 – April 26, 2020 as compared to one of two statutory periods, will not lose forgiveness based upon the FTE reduction.
- Loan forgiveness will not be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction.

FTE Calculation

- The SBA is using a 40-hour workweek standard for FTE calculation. Any employee who works 40 hours or more each week is considered as one FTE.
- An employee who works less than 40 hours per week may be counted as a half (.5) FTE.
- Alternatively, as to employees who work less than 40 hours per week, the employer may calculate the average number of hours per week during the covered period compared to the 40-hour workweek. For example, if the average number of hours per week is 30, then that employee would count as a .75 FTE, and if the average number of hours per week is 10, then that employee would count as a .25 FTE.

Payroll Costs

- Payroll costs are generally incurred on the day the employee's pay is earned. Employee pay is generally "earned" on the day the employee worked. For employees who are on the payroll but not working, the payroll costs are incurred on the schedule established by the borrower (typically the day the employee would have worked).
- Only borrowers with a payroll cycle that is bi-weekly or more frequent may use the alternative covered payroll period. That is, the eight-week period that begins on the first day of the first payroll period beginning after receipt of the loan

proceeds.

- Bonuses or hazard pay paid to employees during the covered period are permissible payroll costs (subject to the annualized cap of \$100,000 per employee, or \$15,385/employee).
- Owner-employees and self-employed individuals' forgivable payroll compensation can be no more than eight weeks of their 2019 compensation or \$15,385 per individual in total across all businesses. And no additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, because such expenses are paid out of their net self-employment income.
- Owner employees' loan forgiveness request is capped by the amount of 2019 employee cash compensation and employer retirement and healthcare contributions made on their behalf.
- Schedule C filers' loan forgiveness is capped by the amount of their owner compensation replacement, calculated based on 2019 net profit.
- General partners' loan forgiveness is capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by .9235.

Nonpayroll Costs

- Nonpayroll costs are eligible for forgiveness if paid during the covered period or, incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.
- The SBA's example relates to a borrower who has a covered period of June 1 – July 26. According to the SBA, the borrower pays its May and June utility bill during the covered period and should be forgiven. The SBA also allows the borrower to be forgiven for the portion of its July utility bill (through July 26) because it was incurred during the covered period and paid on the next regular billing date after the covered period.
- Advance payments of interest on a covered mortgage obligation are not eligible for loan forgiveness.

As always, we are here for you. If you have any questions about this alert or if we can assist in any other way, please reach out.

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