

Additional Guidance Now Available Concerning Paycheck Protection Program Loan Forgiveness

05/27/20

On Friday, May 22, 2020, new regulations were promulgated by the Department of the Treasury and the Small Business Administration (SBA) which adds further guidance to the process for obtaining forgiveness of Paycheck Protection Program (PPP) loans. The new interim final rule supplements earlier rulemaking and can be accessed at [here](#).

PPP Loan Forgiveness

The new interim final rule clarifies some questions in connection with PPP loan forgiveness, specifically:

- *Alternative Payroll Covered Period.* As an administrative convenience, Borrowers with bi-weekly or weekly payrolls can elect to use an eight week alternative payroll covered period that commences with the first payroll date after the disbursement of loan proceeds and continues for the next eight weeks. Payment of payroll incurred during the alternative payroll covered period must be made before the first payroll date after the end of the eight week alternative payroll covered period.
- *Bonus and Hazard Pay Permitted.* Acceptable payroll costs include wage or salary payments to furloughed employees, and payments of bonuses or hazard pay so long as all payments to a particular employee do not exceed \$15,385 for the covered period or alternative payroll covered period.
- *Limits on Owner Compensation.* Loan forgiveness for self-employed individuals and owner employees is limited to the lesser of \$15,385 or 8/52 of their 2019 compensation, inclusive of retirement and health care contributions.
- *Payment of Expenses After Covered Period.* Loan proceeds used for specified non-payroll expenses are eligible for forgiveness if they were paid during the covered period, **or** if they were incurred during the covered period and paid by their next regular billing date after the covered period ends.
- *Alternative Calculation of Full and Part Time Employees.* Full time employees (FTEs) are specified to be those employees who work 40 hours per week (not 30 hours per week as previously surmised). Given that some employers do not maintain hours worked data, the Borrower now may elect to treat employees working less than 40 hours per week either (a) on the basis of their average recorded number of hours per week, or (b) as one half (0.5) of an FTE.
- *Voluntary Terminations, Firing Not Counted for FTE Retention Test.* Employees who resigned, voluntarily requested a reduction in hours or were terminated for cause during the covered period or alternative payroll covered period are not counted as reductions in FTEs for the purposes of Borrower's obligation to maintain FTEs at their prior level.
- *Declined Rehire Offers Not Counted for FTE Retention Test.* A Borrower's failure to maintain the level of FTEs does not necessarily result in a reduction of loan forgiveness if, as to an employee that was laid off or subjected to reduced hours, (a) the employee declined in writing a written offer to return to work at the previous level of hours and compensation during the covered period or alternative payroll recovered period, (b) the Borrower retains records documenting the offer and its rejection, and (c) the Borrower notified the state unemployment insurance office of the rejected offer within thirty days of the rejection.
- *Declined Rehire Offers Must Be Reported to Unemployment.* As stated above, the Borrower must notify the state unemployment insurance office of the rejected rehire offer within thirty days of the rejection.

- *Wage Reduction Test Harmonized with FTE Retention Test.* A Borrower's failure to maintain compensation of each employee at not less than 75% of prior wage does not necessarily result in a reduction of loan forgiveness if, as to a specific employee, (a) the compensation is reinstated at not less than 75% of the prior wage on or before June 30, 2020, **or** (b) the wage reduction is attributable to a reduction in FTEs (e.g., the wage reduction of an employee who went from full time to part time, or who ceased to work for the Borrower at all, would not be counted).

PPP loan forgiveness is further subject to SBA's review of the lender's determination of forgiveness and, in some cases, of the Borrower's need for the loan. Further regulations on the SBA's review process are promised.

The interim final regulations are more complex than is set forth in this summary and should be reviewed carefully by each Borrower. If you have questions about this alert or your PPP loan, contact [Douglas Watson Lubic](#), [Peter Greenbaum](#) or any member of the Wilentz [Business Law team](#).

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