

Legislative Update

What We Know Now

June 1, 2020

PPP Loan Forgiveness Application Dates To Remember

FTE Reference Periods

2/15/2019-6/30/2019

1/1/2020-2/29/2020

Salary/Wage Reference Period

1/1/2020 – 3/31/2020

Safe Harbor – FTE and Salary/Wage Reduction

Return FTE and Salary/wages to pre-pandemic levels by 6/30/2020 as compared to 2/15/2020

Lender has 60 days to determine forgiveness after receiving a complete application

SBA then has 90 days to review application

Borrowers have 30 days to appeal SBA determination



Summary of Forgivable Payroll Costs Paid or Incurred

- (1) Cash compensation capped at \$15,385 per employee**
- (2) Employer contributions for retirement taxes healthcare, no cap**
- (3) State and local taxes assessed on employee compensation**

*Employees, who are not owners, can receive bonuses and hazard pay or increased contribution for retirement and healthcare



SBA Interim Rule 5/22/2020

Are salary, wages, or commission payments to furloughed employees; bonuses; or hazard pay during the covered period eligible for loan forgiveness?

Yes. ...borrowers (can) continue paying their employees even if those employees are not able to perform their day-to-day duties, whether due to lack of economic demand or public health considerations. if an employee's total compensation does not exceed \$100,000 on an annualized basis, the employee's hazard pay and bonuses are eligible for loan forgiveness...



New Category – New Confusion

SBA – different forgiveness rules for

- (1) Schedule C filers
- (2) General Partners
- (3) Employee – owners *



Schedule C Filer: Payroll costs related to compensation during the eight-week period are capped at 8/52 of 2019 net profit. This amount does not include contributions for retirement and healthcare and incorporates a limitation based on 2019 total compensation.

General Partners: Payroll costs related to compensation during the eight-week period are capped at 8/52 of 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 0.9235. This amount does not include contributions for retirement and healthcare and incorporates a limitation based on 2019 total compensation.

SBA explained the exclusion of retirement and health insurance for Schedule C filers and general partners:

“No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, as such expenses are paid out of their net self-employment income.” (SBA IFR 5/22/2020)



Rationale for the “8/52 of 2019 net” cap for Schedule C filers (SBA IFR 4/20/2020):

For individuals with self-employment income who file a Schedule C, the Administrator, in consultation with the Secretary, has determined that it is appropriate to limit loan forgiveness to a proportionate eight-week share of 2019 net profit, as reflected in the individual’s 2019 Form 1040 Schedule C. This is because many self-employed individuals have few of the overhead expenses that qualify for forgiveness under the Act. For example, many such individuals operate out of either their homes, vehicles or sheds and thus do not incur qualifying mortgage interest, rent or utility payments. As a result, most of their receipts will constitute net income. Allowing such a self-employed individual to treat the full amount of a PPP loan as net income would result in a windfall.



Employee-Owner:

Payroll costs related to compensation during the eight-week period are capped at 8/52 of 2019 total compensation (i.e., cash compensation and benefits). This amount includes employer contributions for retirement and healthcare, but incorporates a limitation based on 2019 total compensation.

This new determination is a contradiction to the loan application

Compensation paid to employee-owners of corporate borrowers was treated the same as payroll costs paid to any employees when determining the PPP loan amount, and the prior-articulated rationale for partners and shareholders is not necessarily correct or appropriate when applied to employee-owners who are shareholders of corporations.



New Legislation in the works

House passes the Paycheck Protection Program Flexibility Act

- Reduces the loan amount to be spent on payroll from 75% to 60%
- Increases funds for nonpayroll expenses from 25% to 40%
- Extend covered period from 8 weeks to 24 weeks
- FTE and Wage/Salary reduction Safe Harbor moved from 6/30/2020 to 12/31/2020
- Extend loan repayment from 2 to 5 years
- Allow PPP recipients to defer payroll taxes



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Questions?

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As requirements change and laws are passed, we will update you as soon as possible.

Don't forget to wash your hands!

