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COVID-19: Paycheck Protection Program Loan Forgiveness – What You Need to Know

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Last week, hundreds of thousands of applications for loans under the Paycheck Protection Program (PPP) were submitted to banks all over the country, and it's likely that many more will be submitted in the coming weeks. So far, businesses have been focused rightfully on receiving the PPP loan. As loans are actually advanced to borrowers, we expect the focus will turn to ensuring that as much of the loan as possible is forgiven.

The U.S. Treasury has indicated that it will provide additional guidance on PPP loan forgiveness, but with loans being advanced as early as this week, understanding forgiveness is important now. This is because the key to forgiveness is spending money on forgivable expenses in the eight weeks following the advance of the loan.

The CARES Act provides that up to the entire principal balance of the loan may be forgiven. The interim final rule indicates that accrued interest may also be forgiven. There are, however, important limitations that apply:

1. **Forgivable Purposes**. As most know, PPP loan proceeds may be used only for certain allowable purposes. What is less well known is that only certain of those purposes also result in the loan being forgiven. Those purposes are: payroll costs (which has the same meaning as payroll for purposes of determining the amount of the loan), interest on mortgages securing real or personal property (incurred before February 15, 2020), rent (for leases in force before February 15, 2020) and utilities (for services that began before February 15, 2020).

2. **Eight-Week Period**. Only costs incurred and payments made for forgivable expenses ***during***

the eight-week period beginning on the date of the PPP loan advance will result in forgiveness. For businesses with weekly or biweekly payroll periods, this makes it likely that they will have eight or four full pay periods included. [1] For businesses with semi-monthly payroll periods, however, depending on the date of advance, three or four periods may fall within the first eight weeks. Depending on further guidance from Treasury, businesses may need to tweak their payroll period to ensure maximum forgiveness.

3. **75% Payroll Cost Minimum**. Treasury, in the interim final rule, added a restriction limiting the amount forgiven for non-payroll costs to 25% of the amount forgiven. This is designed to be consistent with the requirement that no more than 25% of the loan be used for non-payroll costs, i.e., that at least 75% of the loan be used for payroll costs.

4. **Reductions**. The forgiven amount is also reduced for businesses that reduce their headcount and/or reduce salaries/wages paid to employees.

- **Headcount**. If a business's average full-time equivalent employees during each month of the eight-week period is less than the average during either the period from February 15, 2019, to June 30, 2019, or January 1, 2020, to February 20, 2020 (at the business's choice), the forgiven amount is reduced by the percentage reduction in headcount. In other words, if headcount is reduced by 10%, the forgiven loan amount is also reduced by 10%.

- **Salary/Wages**. With respect to employees earning less than $100,000, the amount forgiven is reduced by the amount of any reduction in salary/wages during the eight-week period that exceeds 25% of the employee's salary/wages for the most recent full quarter.

- **Rehiring**. Importantly, the headcount and salary reductions discussed above will not include any reduction between February 15, 2020, and April 27, 2020, ***if*** the business remedies the reduction on or before June 30, 2020. This is designed to incentivize businesses to rehire laid off and furloughed employees.

Although each business' situation will be unique, this Excel calculator is designed to assist with estimating the amount of a PPP loan that may be forgiven.

We expect Treasury to provide further guidance regarding loan forgiveness, and we will send out an updated alert when that guidance is issued.

In the event that your company receives an SBA loan under the CARES Act, the identity of your company, the amount borrowed, loan forgiveness, and other information about the loan or your company may be subject to public disclosure (i) by SBA under the Freedom of Information Act or (ii) if your loan information is obtained by the U.S. Congress or other governmental authorities.

[1] We note that there is some ambiguity in the statute and guidance regarding whether payroll costs incurred during the 8-week period qualify for forgiveness if they are not also paid during the 8-week period. This could be relevant for businesses that pay on a bi-weekly basis one week in arrears. We hope future guidance from Treasury will address this issue.

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