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You Got a PPP Loan…is it Forgivable?

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Now that many small businesses (and independent contractors) have applied for and received loan proceeds under the Paycheck Protection Program (PPP), loan recipients need to ensure that proceeds are used for allowable purposes specified in the CARES Act and comply with guidelines that maximize the potential for loan forgiveness.

The Treasury Department and the Small Business Administration (SBA) have stated that additional loan forgiveness guidance will be announced. Because the rules and instructions for forgiveness are likely to evolve in the coming weeks, the information below should be used as tentative guidance for planning to optimize your loan forgiveness.

Basics of PPP loans

PPP loans are a forgivable loan for small businesses designed to incentivize businesses to retain their workers. The loan is administered and guaranteed by the SBA). Loan proceeds must be used to cover payroll costs, mortgage interest, rent, and utility costs over the 8-week period after the loan is made.

Allocate your loan proceeds appropriately over the 8-week period

- At least 75% of loan proceeds must be used for payroll costs and the remaining 25% of loan proceeds can be used for other allowable uses (i.e., mortgage interest, rent, utility costs).
- Remember, payrolls costs consist of compensation to employees (whose principal place of residence is in the U.S.) in the form of:
    - salary, wages, commissions, or similar compensation;
    - cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips);
    - payment for vacation, parental, family, medical, or sick leave;
    - allowance for separation or dismissal;
    - payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees;
    - payment of state and local taxes assessed on compensation of employees; and
    - for an independent contractor or sole proprietor, wage,

commissions, income, or net earnings from self-employment or similar compensation.

Maintain your full-time employees

If the average number of full-time employees per month during the 8-week period is lower than, the average monthly full-time employees during February 15, 2019 to June 30, 2019, or the average number of full-time employees per month during the period from January 1, 2020 to February 29, 2020, then the loan forgiveness amount will be reduced by the ratio of full-time employees during the 8-week period to the number of full-time employees during the 2019 or 2020 comparison periods.

Note: You can choose either time period to calculate the average, but you will be better served by using the period with fewer full-time employees.

Maintain salaries and wages paid to specific employees

- Loan forgiveness will also be reduced if the reduction of wages paid to any employee during the 8-week period is in excess of 25% of the wages paid during the most recent full quarter during which the employee was employed before the 8-week period.
- Employees who during any single pay period in 2019 received wages at an annualized rate in excess of $100,000 can be excluded from this reduction calculation.

Avoid a reduction in loan forgiveness.

- The reductions described above can be avoided by:
    - eliminating the full-time employee reduction by no later than June 30, 2020; or
    - eliminating the wage reduction for the specified employee by no later than June 30, 2020.
- The SBA has further specified in FAQ #40 that a business's loan forgiveness amount will not be reduced if the business laid off a full-time employee and offered to rehire the same employee (for the same salary/wages and same number of hours), but the employee declined the offer for rehire.

We encourage you to visit Holland & Hart's Coronavirus Resource Site, a consolidated informational resource offering practical guidelines and proactive solutions to help companies protect their business interests and their workforce. The dynamic Resource Site is regularly refreshed with new topics and updates as the COVID-19 outbreak and the legal and regulatory responses continue to evolve. Sign up to receive updates and for upcoming webinars.

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