

PPP LOAN FORGIVENESS

The federal government enacted Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which is designed to provide financial relief to American businesses in response to the economic fallout from the efforts to stem the coronavirus (COVID-19) pandemic. One of the core pieces of the CARES Act is the provision of hundreds of billions of dollars for small businesses through federally-backed loans under an expanded Small Business Administration (SBA) through a Section 7(a) loan guaranty program called the Paycheck Protection Program (PPP Loans). PPP Loans are designed to be wholly or partially forgiven, based on payroll retention.

Loan Forgiveness -- General Rules

PPP Loan proceeds are to be used for payroll costs, mortgage interest, rents, and utilities for eight weeks from the date of the loan. Forgiveness for PPP Loans is available for employers that maintain certain payroll thresholds. Generally, the amount of forgiveness is reduced by cuts in headcount and by reductions in salaries.

The first reduction applies to proportionately reduce the forgiveness by multiplying the qualifying costs by a fraction. This fraction has the 2020 covered period full-time employee equivalents (FTEs) as its numerator and the 2019 FTEs as its denominator.

The second reduction applies to reduce the forgiveness by the amount of reduction in compensation paid. For each employee, the amount of the compensation received that is below 75% of the compensation at the pre COVID-19 rates directly reduces the amount of the forgiveness.

These two tests have left plenty of questions unanswered. Some of these are addressed by the PPP Loan Forgiveness Application.

Loan Forgiveness Application

On May 15, 2020, the SBA issued the PPP Loan Forgiveness Application (the Application), a copy of which can be found here: <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf>. This Application provides some new guidance that may be helpful in maximizing loan forgiveness.

Guidance from the SBA to date has stated that the 8-week period for use of the PPP Loan proceeds begins on the date of the loan. The Application provides an alternative, which allows employers to start the 8-week period on the first payroll date following the receipt of the proceeds. This alternative date applies only to payroll costs and not rents and utilities.

For purposes of the FTE reduction calculation, the Application provides some guidance and leniency in calculating the FTE count. The Application provides for two methods for calculating FTEs:

1. Take the total hours worked each week for all employees (capped at 40 for any particular employee) and divide those hours by 40; and
2. Credit any employee 40-plus hour weeks with 1.0 and all other employee weeks with 0.5.

The Application provides additional guidance on the FTE count with respect to former employees. When counting FTEs, an employer can exclude those that have refused to return, those that are fired for cause, those that quit, and those that voluntarily requested and received reduced hours.

There are two safe harbors for the FTE count reduction that provide the employer with no reduction of forgiveness. The first provides that if the number of FTEs on February 15, 2020 is greater than or equal to the average number of FTEs for the period February 16, 2020 through June 30, 2020 AND the number of FTEs on June 30, 2020 is equal to the FTEs on February 15, 2020, then the safe harbor is met and no reduction for FTEs is applied.

The second FTE safe harbor provides that if the FTEs on June 30, 2020 are at least equal to the FTEs on January 1, 2020, then there is no reduction for the FTE count.

There is a 75% salary reduction safe harbor in the Application. If the salary or hourly wage on February 15, 2020 is greater than or equal to the average salary or hourly wage for February 16, 2020 through June 30, 2020 AND the salary or hourly wage on June 30, 2020 is equal to the salary or hourly wage on February 15, 2020, then the safe harbor is met and no reduction for payment of an employee's compensation below 75% is applied.

Whiteman Osterman & Hanna LLP can assist with these issues and more, as you and your business work to navigate the novel and difficult decisions arising from the COVID-19 pandemic. For assistance with PPP loan forgiveness, please contact Scott Shimick – 518.487.7678 – SShimick@woh.com.