PPP LOAN FORGIVENESS UPDATE

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THE DOTY GROUP

CONGRESSIONAL UPDATES

Potential Senate vote as early as this week that would double the loan forgiveness period to 16 weeks

House expected to vote this week on stand alone legislation that would extend the loan forgiveness to as long as 24 weeks and also eliminate the rule requiring PPP borrowers to spend at least 75% of the funds on payroll costs to qualify for forgiveness.

Separate Senate bill to expand loan forgiveness to 24 weeks and eliminate the 75% rule.

INTERIM RULE TO ADDRESS REQUIREMENTS FOR LOAN FORGIVENESS

On Friday May 22, the Treasury and US SBA released new guidance to answer more than a dozen questions related to the loan forgiveness process, which payroll and nonpayroll costs are eligible for forgiveness, and how various scenarios affect the amount of loan forgiveness for which a borrower qualifies.

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HIGHLIGHTS

Establishment of an alternative method for determining when the eight-week period starts for businesses with pay cycles of biweekly or more frequent.

These borrowers can elect an alternative payroll covered period, which is the eight-week period starting the first day of the pay period after they received the funds. Previously, the only starting date allowed was the day the lender disbursed funds to the borrower — which remains the requirement for all businesses with pay periods less frequent than biweekly.

HIGHLIGHTS

Payroll costs are considered paid on the day that paychecks are distributed, or the borrower originates an ACH credit transaction.

Payroll costs incurred during the borrower's last pay period of the covered period or the alternative payroll covered period are eligible for forgiveness if paid on or before the next regular payroll date.

Payroll costs are generally incurred on the day the employee's pay is earned (i.e., on the day the employee worked).

For employees who are not performing work but are still on the borrower's payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).

Payroll costs that were both paid and incurred during the covered period (or alternative payroll covered period) may only be counted once.

HIGHLIGHTS

Clarification that bonuses and hazard pay are eligible for loan forgiveness, as are salary, wages, and commission payments to furloughed employees. The payments cannot exceed the pro-rated amount of a $100,000 annual salary.

Establishment of caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation. Specifically, the amount requested can be no more than the lesser of 8/52 of 2019 compensation (i.e., approximately 15.38% of 2019 compensation) or $15,385 per individual in total across all businesses.

For self-employed individuals, including Schedule C filers and general partners, no additional forgiveness is provided for retirement or health insurance contributions.

HIGHLIGHTS

Clarification on when non-payroll costs must be incurred or be paid to qualify for loan forgiveness. Specifically, the costs must be paid during the eight-week period or incurred during the period and paid on or before then next regular billing date, even if that date is after the eight weeks.

The guidance also states that advance payments on mortgage interest are not eligible for loan forgiveness.

Reiteration of the previously announced guidance setting the rules for when employers can exclude from loan forgiveness calculations employees who refuse to be rehired.

The guidance released Friday includes a requirement for borrowers to notify the state unemployment office of an employee's rejected offer within 30 days of that rejection.

HIGHLIGHTS

A reduction in an employee's salary or wages in excess of 25 percent will generally result in a reduction in the loan forgiveness amount.

The borrower must reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25 percent of base salary or wages. This reduction calculation is performed on a per employee basis, not in the aggregate.

Definition of full-time equivalent as 40 hours or more, and two methods for calculating FTEs for non full-time employees.

HIGHLIGHTS

Declaration that borrowers can restore forgiveness if they rehire employees by June 30 and reverse reductions to salaries and wages for FTE employees by June 30.

The guidance said loan forgiveness totals would not be reduced for both hours and wage reductions for the same employee.

When an employee of the borrower is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule, the borrower may count such employee at the same full-time equivalency level before the FTE reduction event when calculating the FTE employee reduction penalty.