PPP Loan Forgiveness: Your Critical Questions Answered

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Agenda

- The Main Takeaways
- Calculations
- Q & A

The Main Takeaways

- A continuation of a more business-friendly Treasury/SBA; let's take a stroll through the history of the Program.
- Incurred and paid treatment - a hybrid accrual/cash basis.
- Creation of an "Alternative Payroll Covered Period".
- Definition of FTE and simplified method in computing.

The Main Takeaways

- Wage rate safe harbor is independent of FTE safe harbors.
- Annualization of compensation during 8 week period defined: based on entire 8 week period with cap of $15,385.
- Calculation of 25% limit on nonpayroll costs clarified - not a cliff test. Divide payroll costs by 75% to get maximum forgiveness amount.

The Main Takeaways

- Payment required for sole proprietor/partner owner but capped at $15,385.
- Sole proprietors can apparently use rent, utilities and mortgage interest in loan forgiveness calculation.

Calculation of Payroll Costs

- Payroll paid and incurred in the Covered Period ("CP") - 8 weeks from the date the loan funded.
- Paid would encompass, presumably, payroll paid in the CP that relates to payroll earned before the CP. Incurred would include payroll earned in the CP but not paid until the first pay date after the end of the CP. Both count.
- No double-counting of same payroll cost.

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Calculation of Payroll Costs

- New Alternative Payroll Covered Period that allows certain borrowers to use their regular payroll schedule to shift the CP for payroll costs only. Those borrowers will have two CPs - one for payroll costs and one for nonpayroll costs.
- Eligible borrowers are those with biweekly or more frequent payroll schedules.
- Start the 8 week period on the first day of the payroll period following the loan funding date.

Calculation of Payroll Costs

- For both methods, calculation is on an employee by employee basis with different limitations for owners, partners, and sole proprietors.
- Maximum cash compensation is $100,000 on annualized basis and annualization is based on the entire covered period.
- Effect is to limit cash compensation eligible for forgiveness in CP to $15,385 per employee.

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Calculation of Payroll Costs

- Owner-employees, partners and self-employed individuals' calculation adds another limit: the amount is capped at the lower of $15,385 or their 8 week equivalent of compensation paid in 2019.
- It also appears, based on the language in the instructions, that this compensation must be paid i.e. in draw or salary.

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Calculation of Payroll Costs

- Non-cash payroll costs (Health insurance premiums, contributions to retirement plans and state and local taxes assessed on employee compensation) are not subject to the $15,385 limit.
- It appears that owners can't include non-cash payroll costs in loan forgiveness. Do S-Corp owners qualify?
- Paid and incurred inclusiveness as well as the Alternative Payroll CP applies to non-cash payroll costs.

Calculation of FTE and Wage Reductions

- An FTE (Full Time Equivalent) is defined as an employee who works 40 hours or more each week. An employee can not count for more than 1.0 FTE.
- Employees that work less than 40 hours a week are a fraction of an FTE, rounded to the nearest tenth.
- A simplified method of using .5 for all part-time employees is available.

Calculation of FTE and Wage Reductions

- Potentially, you may have to prepare an FTE calculation for five periods and one date.
- If you know that your FTE has been increasing since 1/1/2020 and the end of the CP, you can check a box and skip the calculations.
- The FTE Reduction Safe Harbor is not clearly separate from the Wage Reduction Safe Harbor.

Calculation of FTE and Wage Reductions

- If you know that your FTEs went down during 2/15/2020 through 4/26/2020 and you will restore the FTEs by 6/30/2020, then you only need to calculate your FTEs for the pay period including 2/15/2020 and for 6/30/2020.
- Otherwise you will need to calculate your FTEs for the CP and two lookback periods, 2/15/2019 to 6/30/2019 and 1/1/2020 to 2/29/2020.

Calculation of FTE and Wage Reductions

- Calculation of FTE is by employee. You must include each pay period that touches the period and average each employee's FTEs.
- So, for a single employee, for a single look back period, you may need to calculate the employee's FTE up to 21 times and then calculate the average.

Calculation of FTE and Wage Reductions

- These instructions include a new business friendly wrinkle.
- Employees that refuse to return to work, were fired for cause, quit, or requested a reduced schedule do not count against you.
- You still have to perform all the calculations and then subtract them out at the bottom.
- Additional complications arise with replacement employees.

Calculation of FTE and Wage Reductions

- We think that the logic behind the FTE Reduction Exception should also apply to the Wage Reduction limitation. FAQ 40 supports this view.
- The Wage Reduction Limitation applies to employees that were paid at the rate of less than $100,000 for all pay periods in 2019.
- Calculating the reduction and safe harbor is 13 step process on an employee by employee basis.

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Calculation of FTE and Wage Reductions

- Let's try to keep this one simple. To avoid the Wage Reduction Limitation, you may either:
- Pay each employee at an annualized rate of at least 75% of what they were paid during the first quarter of 2020; or,
- Restore any reductions in pay rate or salary by 6/30/2020.

Calculation of Nonpayroll Costs

- Nonpayroll costs include rent, utilities and mortgage interest.
- The paid and incurred concept applies here as well. Rent paid in arrears during the CP would seem to qualify as well as a utility bill paid after the 8 weeks that was incurred during CP. It appears that prepayment of rent and utilities would also qualify.
- There is not much guidance on the definition of utilities but the Act includes electricity, gas, water and sewer plus telephone, internet access, and transportation.

Calculation of Nonpayroll Costs

- Mortgage interest is interest paid on debt secured by real or personal property incurred before 2/15/2020.
- Rent is on leases entered into before 2/15/2020 on real or personal property. There does not appear to be a prohibition against self-rentals.
- Remember that nonpayroll costs are capped at 25% of the loan forgiveness amount.

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Putting It All Together

- The order of forgiveness reduction - Pay rate reduction first then FTE reduction. This is the opposite of what's in the Act but gives a better result.
- Potential forgiveness amount is the lesser of the PPP loan amount, the total payroll costs and nonpayroll costs, or payroll costs divided by .75.
- Forgiveness of interest accrued? Form and Act indicate that only principal will be forgiven but interim rules say YES.

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Putting It All Together

Documentation that will be required:

- For cash payroll costs: Bank statements, 3rd party payroll provider reports, Form 941 reports, state payroll tax returns.
- For noncash payroll costs: payment receipts, cancelled checks, account statements.

Putting It All Together

Documentation that will be required for nonpayroll costs:

- Mortgage interest: copy of lender amortization schedule, cancelled checks or lender statements for CP and February 2020.
- Rent and lease payments: copy of current lease agreement, cancelled checks or lessor statements from CP and February 2020.

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Putting It All Together

Documentation that will be required for nonpayroll costs:

- Business utility payments: copy of invoices from February 2020 and those paid during the CP, cancelled checks or account statements.
- Documentation showing how FTE calculations were made, including payroll tax filings to IRS and state for all relevant periods.

Q & A

Thank you from

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