Updates to PPP Forgiveness Regulations Released

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On May 22, the Small Business Association (SBA) issued a new Interim Final Rule that describes the forgiveness requirements applicable to PPP loans. These regulations largely implement the requirements of the PPP Loan Forgiveness Application that was released on May 15. Here are the highlights:

Payroll Costs:

- The regulations officially implement the "Alternative Payroll Covered Period" described in the application. This alternative period permits borrowers to track payroll costs during the 56 day period that begins on the first day of the first pay period following the disbursement of the loan. The purpose of this alternative period is to make recordkeeping easier.
- Payroll costs eligible for forgiveness include payroll costs that are incurred **or** paid during the covered period (or alternative payroll covered period). This rule appears to be very favorable to borrowers.
    - Take, for example, a borrower with a pay period running from April 7 to April 20 that receives PPP loan proceeds on April 22 and has a check date of April 24. The April 24 pay date is eligible for forgiveness because it was paid during the covered period, even though the pay period ended before the covered period.
    - Borrowers may also include the pro-rated portion of payroll costs incurred during the last pay period of the covered period, even if the pay date for that pay period falls outside the covered period.
    - This "paid or incurred" standard was also adopted for non-payroll costs (e.g., rent and utilities).
- The regulations also confirm that bonuses and hazard pay are permissible payroll costs that are eligible for forgiveness, while also clarifying the limits placed on those who are self-employed, owner-employees, and members of a partnership.

Forgiveness Reduction Formulas:

- The employee census test uses a 40 hour per week standard to determine "full-time equivalent" employees. A simplified test is also available, where employees working 40 hours per week or more are considered 1 FTE, and employees working less than 40 hours are .5 FTEs.
- The wage reduction test was restated to evaluate employees' rate of pay (rather than amount paid) in determining any reduction. This restatement prevents employers from suffering a double reduction. In other words, the wage reduction amount only applies to a decline in wages *not* attributable to a reduction in hours.
- The regulations provide a June 30 safe harbor for both tests. The safe harbors avoid application of the reduction formulas if employers cause their FTEs and employee wages to equal or exceed their February 15, 2020 levels. Each safe harbor has a prerequisite calculation that must be satisfied before the safe harbor may be used.

These new regulations provide additional clarity and flexibility in forecasting their PPP forgiveness amount. This additional flexibility also allows employers to make strategic spending decisions that were not previously available. To learn more about how these new regulations impact your PPP loan forgiveness planning, contact Taylor Gast or Mike Zahrt.

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While the information in this article is accurate at time of publication, the laws and regulations surrounding COVID-19 are constantly evolving. Please consult your attorney or advisor to make sure you have the most up to date information before taking action.