Forgiveness: The Nitty Gritty

With hundreds of questions under our belt, we think we know the Top Ten issues currently irritating borrowers about Paycheck Protection Program (PPP) loans and their forgiveness. Here are our thoughts on the Top Ten. Before we begin, two quick reminders: (1) this Program remains a work-in-process and information provided is subject to change! (2) for all costs about which the CARES Act and the SBA are silent, there is the possibility that payment of those costs will not be forgiven and will have to be repaid.

The information below is valid as of June 4, 2020 at 11:00 a.m. and does not include revisions from the Paycheck Protection Program Flexibility Act of 2020 passed by Congress on the evening of June 3. This bill proposes to modify key aspects of the PPP and ultimately aims to provide greater flexibility for borrowers to spend their loan proceeds and subsequently seek forgiveness. Subsequent guidance regarding that specific bill and those changes will be issued separately if and when the bill is signed into law by the President. Read more.

The application

The Loan Forgiveness Application (the Forgiveness Application or the Application) has a lot of pages and instructions. The Application has five parts: Loan Forgiveness Calculation Form; Schedule A; Schedule A Worksheet; Documentation Requirements; and a Borrower Demographic Information Form. The demographic information is optional, while the calculation form and Schedule A must be submitted to the lender. Two common questions about the Application include (1) when it is due, and (2) how a borrower answers questions about the number of employees.

There is no due date established in either the CARES Act (the Act), the statute establishing the PPP, or in guidance issued by the SBA. Because the Application requires submission of IRS Form 941, the Application must wait until Form 941 is filed and, presumably, taxes paid. After Form 941 is available and the borrower has all other required documentation, the Forgiveness Application may be submitted.

The Application is also evoking memories of an input on the initial Borrower Application Form, which required applicants to input their "Number of Employees." The Forgiveness Application requests "Employees at Time of Loan Application" and "Employees at Time of Forgiveness Application." What information is being sought by the SBA? Is it the total number of individuals on the payroll at the date of each application or something else? There is no guidance on how to compute the requested number, and it is not clear why this information is requested. Nevertheless, a borrower should be consistent with the approach used to determine and complete the request for number of employees when completing the initial Borrower Application Form. One approach is to use the definition of an "employee" used by the SBA for determining whether a borrower meets the size requirement for the Program; generally, 500 employees or less. In that instance, each person employed by the borrower, whether employed full-time, part-time or on some other basis, is counted as an employee. Provide the best information you have as of the date of your application and based on your understanding of the PPP. Document the basis for your numbers, including any changes in borrower affiliates and their related employees. The more important questions about the number of employees are related to full-time equivalent (FTE) employees and are addressed later in the Forgiveness Application.

The covered period, alternative payroll covered period, paid and/or incurred—what the heck?

The CARES Act says that forgivable costs are "costs incurred and payments made during the covered period." As you know, the covered period is eight weeks (56 days) from the disbursement date of the loan. (Careful, counting to 56 is harder than one thinks. Be sure to count the disbursement date as day 1.) The language of the Act left borrowers and their advisers guessing as to whether costs were to be accounted for on a cash, accrual or other basis. The Forgiveness Application and the SBA's Interim Final Rule on Forgiveness (Forgiveness IFR) provide an answer.

a. When must payroll costs be incurred and/or paid to be eligible for forgiveness?

In general, payroll costs ***paid or incurred*** during the eight consecutive week (56 days) covered period are eligible for forgiveness. Borrowers may seek forgiveness for payroll costs for the eight weeks beginning on either: 1) the date of disbursement of the borrower's PPP loan proceeds (i.e., the start of the covered period); or 2) the first day of the first payroll cycle subsequent to loan disbursement (the alternative payroll covered period).

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 or each day that the employee would have performed work).

The covered period, alternative payroll covered period, paid and/or incurred—what the heck?

The Forgiveness IFR expands the definition of covered period so that eligible costs incurred ***and*** costs paid during the covered period are treated as forgivable, even if the costs are incurred before or incurred during but paid after the covered period. Regarding costs incurred but paid after the covered period, the payment must be made on or before the next regular payroll or billing date.

b. Who can use the alternative payroll covered period and are there benefits to using it?

The alternative payroll covered period was created for the administrative convenience of borrowers and is available to borrowers that have a bi-weekly or more frequent pay period. There is no guidance for borrowers with multiple pay periods, such as a borrower that has a semi-monthly payroll for salaried employees and a weekly payroll for hourly employees. Accordingly, the covered period is recommended. While the alternative payroll covered period allows borrowers an administrative convenience, choosing the covered period that will be most beneficial to each borrower will require analysis in order to determine and maximize the amount of payroll costs eligible for forgiveness. As mentioned earlier, keep in mind that forgiveness is cash basis on the front end of the covered period and accrual basis on the back end, provided that costs incurred for payroll are paid on or before the next regular payment date. This accrual on the back end also obviates many borrowers' concerns that short pay periods may have to be executed to ensure costs were includable in the loan forgiveness amount. Consider this example.

A borrower has a bi-weekly payroll schedule (every other week). The borrower's eight-week covered period begins on June 1 and ends on July 26. The first day of the borrower's first payroll cycle that starts in the covered period is June 7. The borrower may elect an alternative payroll covered period for payroll cost purposes that starts on June 7 and ends 55 days later (for a total of 56 days) on August 1. Assume no change in number of employees on payroll between the two periods. Payroll costs paid during this alternative payroll covered period are eligible for forgiveness. In addition, payroll costs incurred during this alternative payroll covered period are eligible for forgiveness as long as they are paid on or before the first regular payroll date occurring after August 1. Payroll costs that were both paid and incurred during the covered period (or alternative payroll covered period) may only be counted once.

Pay Period	Pay Date	Number of Days
Covered Period Start Date: June 1		
05/24-06/06	06/12	14
06/07-06/20	06/26	14
06/21-07/04	07/10	14
07/05-07/18	07/24	14
07/19-08/01	08/07	8
Covered Period End Date: July 26		
Total Number of Days in Covered Period		**64**

Pay Period	Pay Date	Number of Days
Alternative Payroll Covered Period (APCP) Start Date: June 7		
05/24-06/06	06/12	14
06/07-06/20	06/26	14
06/21-07/04	07/10	14
07/05-07/18	07/24	14
07/19-08/01	08/07	14
APCP End Date: August 1		
Total Number of Days in APCP		**70**

c. When must nonpayroll costs be incurred and/or paid to be eligible for forgiveness?

Nonpayroll costs are eligible for forgiveness if: (1) paid during the covered period; or (2) incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period. Here is an example. A borrower's covered period begins on June 1 and ends on July 26. The borrower pays its May and June electricity bill during the covered period (in June and July, respectively) and pays its July electricity bill on August 10, which is the next regular billing date. The borrower may seek loan forgiveness for its May and June electricity bills, because they were paid during the covered period. In addition, the borrower may seek loan forgiveness for the portion of its July electricity bill through July 26 (the end of the covered period), because it was incurred during the covered period and paid on the next regular billing date. Borrowers that choose the alternative payroll covered period for payroll costs will need to track two eight-week periods.

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Payroll costs revisited

Numerous questions revolve around what is included in "payroll costs." The goal posts have moved a couple times on this subject, especially as it relates to owner compensation. Let's start with the basics and move to what is new.

Payroll costs consist of compensation to employees (whose principal place of residence is the United States) 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; and
- Payment of state and local taxes assessed on compensation of employees.

Payroll costs exclude compensation of an employee whose principal place of residence is outside of the United States; the compensation of an individual employee in excess of an annual salary of $100,000, prorated as necessary; and qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (FFCRA). Fees paid to a provider for assisting with a PPP loan are neither allowable nor forgivable payroll costs.

a. *You said "gross wages." What does that mean?*

On April 24, 2020, the SBA issued a document called "How to Calculate Maximum Loan Amounts—By Business Type." While the document does not have the force and effect of law, it is helpful on a number of fronts. When referring to employee compensation, the SBA describes the amount as "the amount from IRS Form 941 Taxable Medicare wages and tips plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages and tips, subtracting any amount paid to any individual employee in excess of $100,000 and any amounts paid to any employee whose principal place of residence is outside the U.S." This is what we intend when we use the term "gross wages."

b. *What are the caps on the amount of loan forgiveness on compensation for owner-employees and self-employed individuals as described in the Forgiveness IFR?*

Before getting started, a quick question—who is an owner-employee? The first answer that comes to mind is a shareholder in an S corporation. Exclusive of that situation, is there a specific ownership interest that qualifies one as an owner subject to the cap? If so, is that interest 20%? 50.1%? 80%? The Forgiveness IFR does not define "owner-employee." Thus, this is yet another question without an answer.

For owner-employees, self-employed individuals, and general partners, cash compensation is capped at the lesser of 8/52 of 2019 compensation or $15,385 (2019 compensation capped at $100,000) per individual in total across all businesses. This means that regardless of the number of businesses an individual may own, total forgivable compensation is 8/52 of 2019 compensation not to exceed 8/52 of $100,000.

Owner-employees are permitted to include in 8/52 of 2019 employer retirement and health care contributions made on behalf of the owner-employee. However, forgiveness is not permitted for retirement or health insurance contributions for self-employed individuals (i.e., Schedule C filers) and general partners, as such expenses are paid out of their net self-employment income.

The specific amount of forgivable costs for Schedule C filers is described as "owner compensation replacement," and is calculated by multiplying "net profit," as reported on line 31 of the filers' 2019 Schedule C, by 8/52. General partners calculate their forgivable costs by multiplying their 2019 self-employment income (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) by 0.9235.

The Forgiveness Application segregates the compensation of "owner-employees, self-employed individuals, and general partners" from the compensation of all others. These individuals are not included in either Table 1 or Table 2 of the Schedule A Worksheet. Instead, their compensation is recorded on Line 9 of the Loan Forgiveness Calculation form.

Finally, a borrower should complete the Forgiveness Calculation based on the guidance available to the borrower at the time the borrower completed its Borrower Loan Application Form. The information regarding self-employed individuals, independent contractors, and treatment of partners or members in limited liability companies did not become available until April 14, 2020, while the window for applications opened April 3 for multi-owner businesses and April 10 for self-employed individuals. Accordingly, it is inevitable that numerous borrowers will have applied for their loans before this guidance was available. The Forgiveness IFR expressly states that a borrower should complete the application consistent with the guidance available to the borrower at the time of the borrower's application for the loan.

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Payroll costs revisited

c. The $100,000 Limit.

The compensation of all employees is included in both allowable and forgivable costs. However, for employees with annual cash compensation (salary, wages, commissions, and other similar compensation) in excess of $100,000, compensation must be pro-rated to 8/52 of $100,000 or $15,385 for the eight week covered period or alternative payroll covered period. Unlike self-employed individuals and general partners, payments of health insurance and retirement benefits on behalf of employees are not part of the $100,000 limit.

As a result of the $100,000 limit, there may be instances in which compensation presented on payroll runs, whether prepared by the borrower or a third-party used by the borrower, differs from the amount sought as part of total forgiveness. Table 2 of the Schedule A Worksheet represents a starting point for reconciling the difference between the payroll report and the forgiveness application.

d. Are bonuses and hazard pay eligible for forgiveness?

Yes! Finally, one of ***the*** most frequently asked questions has been resolved. In the Forgiveness IFR, the SBA says, "if an employee's total compensation does not exceed $100,000 on an annualized basis, the employee's hazard pay and bonuses are eligible for loan forgiveness because they constitute a supplement to salary or wages, and are thus a similar form of compensation." The Forgiveness IFR also states that payments to employees who are furloughed are eligible for forgiveness as long as they do not exceed an annual salary of $100,000, as prorated for the covered period. This answers the early question of whether employees were to be paid for not working.

e. What are forgivable employee health care costs?

There is not a lot of guidance on what constitutes health care benefits. The CARES Act includes "employee benefits consisting of group health care coverage, including insurance premiums" in payroll costs. The Forgiveness Application describes health care benefits as "the total amount paid by the Borrower for employer contributions for employee health insurance, including employer contributions to a self-insured, employer-sponsored group health plan, but excluding any pre-tax or after tax contributions by employees."

The reference in the Forgiveness Application to self-insured plans is one of only two mentions of self-insured plans in the guidance issued to date. The other mention is Q&A 9 from the SBA's Frequently Asked Questions. The specific question is about the type of documentation a borrower may use for substantiating the amount of requested funds. The answer states that "records from a health insurance company or third-party administrator for a self-insured plan can document employer health insurance contributions." Thus, the proper treatment of health care costs by self-insured employers is an unknown. In a recent article republished by Louisville's Business First, an Atlanta lawyer says, "If you have a self-insured plan, you could include payments on claims that are paid or incurred during the covered period." Mark this down as one person's opinion.

Additionally, there is no specific guidance about health care costs like dental and vision insurance. Because dental and vision coverage are typically included in health care benefits, there is a good faith argument that those are forgivable payroll costs. The same may be true with regard to an accident policy, to the extent that payments under the policy are for medical expenses and not replacement of compensation.

f. If a borrower pays its 2019 retirement match or profit-sharing contribution during the covered period, is that a forgivable cost? What about estimating and paying the 2020 contribution—would that be a forgivable cost?

Based on the SBA's interpretation of "paid" and/or "incurred," described above, payment of a 2019 retirement match appears to be a forgivable payroll cost. The benefit is a liability that existed at the time of the covered period and is paid during the covered period. A 2020 contribution, however, poses a slightly different question. In the examples in the Forgiveness IFR in which the SBA allows more costs than a borrower would incur in eight weeks, the common denominator is that those costs have been previously incurred. Concerning a 2020 retirement payment, only a portion of the 2020 retirement payment has been incurred. A borrower thinking about paying its 2020 retirement benefit during the covered period should consider what portion of that payment has been incurred to date, and should be mindful that the SBA could decide the cost is not forgivable and must be repaid over the term of the loan.

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What constitutes nonpayroll costs?

For the most part, the meaning of "nonpayroll costs" is straightforward: (a) interest on any business mortgage obligation on real or personal property incurred before February 15, 2020 (no prepayment of interest or payment of principal is allowed); (b) business rent or lease payments for real or personal property pursuant to lease agreements in force before February 15, 2020; and (c) business utility payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020. The three pervading questions about nonpayroll costs are whether the following constitute forgivable costs: (1) rent or lease payments to a related party; (2) rent or lease payments on personal property, such as motor vehicles, copiers, and cell phones; and (3) fuel costs for business vehicles.

a. Are rent or lease payments made to a related party forgivable costs?

There is no guidance on this question. Related-party lease arrangements are common business arrangements for many businesses. As a result, it is logical to conclude that rent paid to a related party is forgivable. However, laws do not always operate in a logical manner, which makes this another "wait and see" question.

b. Are rent or lease payments on personal property, such as cell phones, motor vehicles, and copiers, forgivable costs?

There is guidance on this question, but the guidance arises in the context of self-employed individuals that file a 2019 Form 1040 Schedule C. It is unclear whether the questions and answers for Schedule C filers can be extrapolated to other types of business entities. Thus, we have yet another open question. Here's the problem.

Section 1102 of the CARES Act, which describes "allowable uses" of PPP loans, makes no reference to interest on loans secured by personal property or rent or lease payments on personal property. Curiously, Section 1106, which lists forgivable uses of the loan, includes the word "personal" when describing forgivable interest because a "covered mortgage" on which interest is forgivable is defined as "a mortgage on real or *personal* property." (*Emphasis added.)* There is no reference to rent or lease payments on personal property, i.e., property that is not land, a building, or building improvements, except in the third IFR issued by the SBA and in the Forgiveness Application, which follows the Forgiveness IFR. The references in the Forgiveness Application and IFR may be viewed as merely consistent with the interpretation set forth in the third IFR, as opposed to a separate and independent interpretation.

The third IFR *solely concerns Schedule C filers*. In context, here is the reference to lease and rent payments on personal property:

> The proceeds of a PPP loan are to be used for the following:
>
> iii. Mortgage interest payments (but not mortgage prepayments or principal payments) on any business mortgage obligation on real or personal property (e.g., the interest on your mortgage for the warehouse you purchased to store business equipment or the interest on an auto loan for a vehicle you use to perform your business), ***business rent payments*** (e.g., the warehouse where you store business equipment or ***the vehicle you use to perform your business***), and business utility payments … You must have claimed or be entitled to claim a deduction for such expenses on your 2019 Form 1040 Schedule C for them to be a permissible use during the eight-week period following the first disbursement of the loan (the "covered period"). For example, if you did not claim or are not entitled to claim utilities expenses on your 2019 Form 1040 Schedule C, you cannot use the proceeds for utilities during the covered period. *(Emphasis added.)*

This section is also where the idea of fuel being a utility cost originates. There are at least two problems with this paragraph.

First, the interpretation by the SBA, even for Schedule C filers, appears contrary to the intent of Congress as evidenced by the language of the CARES Act. The Act provides for interest on mortgage indebtedness (and mortgages are usually associated with real property); rent or lease payments; and utility payments. When read together, these three items constitute occupancy costs. Rent or lease payments on personal property are not generally thought of as such costs.

Second, the SBA's interpretation is more appropriate when considered in connection with certain Schedule C filers. A participant in our webinar on Thursday, May 28, 2020, stated it was his understanding that the lease allowance was made for truckers. The interpretation makes sense in that situation; indeed, it can be argued that the lease payments on trucks (and fuel costs) constitute occupancy costs for some truckers. Regardless of the efficacy of the interpretation, borrowers considering whether to include rent or lease payments on personal property in their forgivable costs should proceed with caution absent clarification by the SBA.

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What constitutes nonpayroll costs?

*c. **Are monthly charges for cell phone service and fuel forgivable utility costs?***

A fair interpretation of the statute is that "telephone" includes cell phones. As many businesses are highly dependent on the use of cell phones, as opposed to the old-fashioned land line, Congress likely intended the inclusion of cell phone service in utilities. The analysis of the question about fuel is nearly identical to the analysis of rent or lease payments on personal property above as fuel is addressed in the same section in the third IFR. In pertinent part, the language is: "The proceeds of a PPP loan are to be used for the following: iii. [B]usiness utility payments (e.g., the cost of electricity in the warehouse you rent or gas you use driving your business vehicle)." A decision to include fuel in forgivable cost is also one to be made cautiously.

What are the FTE and salary/wage reductions, and how do the safe harbors work?

By now, everyone is aware of the FTE and salary/wage reductions that were initially established within the Act and have been ambiguously present ever since. You might know them by reference, but do you really know what they mean? If the answer is no, then this next section is for you.

Declines in FTEs and/or salary/wages of certain employees during the covered period or alternative payroll covered period could result in a corresponding reduction in a borrower's forgiveness amount, unless a safe harbor for either reduction is achieved. In essence, if a borrower restores (i.e., eliminates) a reduction in FTEs or employee salary/wages occurring between February 15 and April 26, 2020 on or before June 30, 2020, the related reduction will not be counted against the borrower's potential forgiveness amount when submitting the Forgiveness Application. Two main questions still remain related to the safe harbor exemptions: (1) How to calculate FTEs as of a date in time (i.e., June 30, 2020) and (2) What is meant by the restoration of an employee's average annual salary/wage on or before June 30, 2020 (i.e., Is back-pay required to be paid? Prior to June 30, do you need to provide raises to employees above their normal salary/wage to offset earlier reductions?). Professional judgment will be required when performing these calculations, and borrowers will need to ensure appropriate documentation is retained to support the calculations and conclusions reached.

What is an FTE and how do I calculate it?

First and foremost, what is an FTE? With the release of the Forgiveness Application, borrowers finally received some clarification on what exactly an FTE is. Ultimately, the Forgiveness IFR defined an FTE as "an employee who works 40 hours or more, on average, each week." The definition in the Forgiveness IFR, rather than a borrower's internal company policy, must be used to calculate FTEs. Aside from the FTE exceptions that we will cover later, the guidance does not clarify whether or not seasonal or temporary workers are included in the FTE calculations. Absent any specific guidance, borrowers should include in their FTE calculations any employee (including newly hired, furloughed employees and those on paid leave) who was paid during the associated reference or covered period.

Keep in mind that the maximum FTE for each individual employee is capped at 1.0. Thus, any FTE calculation should be performed at the individual employee level rather than simply aggregating all employee hours paid during a specific time period and dividing by 40. The latter method could result in inadvertently assigning an FTE greater than 1.0 to an employee who is paid in excess of 40 hours a week, on average.

In addition to providing the definition, both the Forgiveness Application and IFR establish two calculation methods borrowers may elect when determining their FTEs: (1) a Detailed method or (2) a Simplified method. A borrower must be consistent in using the method selected for calculating FTEs related to all necessary reference periods (including either the covered period or alternative payroll covered period). Under the Detailed method, an employee who was paid for 37.5 hours a week on average during the covered period would be considered an FTE employee of 0.9 (rounded to the nearest tenth). However, using the Simplified method, any employee who is paid less than 40 hours a week on average is equal to an FTE employee of 0.5. Said another way, that same employee who works an average of 37.5 hours a week would be considered an FTE employee of 0.9 or 0.5 under the Detailed or Simplified methods, respectively. Determining what method is most advantageous will likely require each borrower to complete the necessary FTE calculations under both methods and choose the most appropriate FTE reduction quotient.

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You mentioned FTE exceptions—what are these?

Prior to the new guidance, many people (okay, fine—all of us) were questioning whether employees who voluntarily left a company, retired or refused to come back to work (for whatever reason) would be counted against a borrower when calculating any form of FTE reduction. Well, now we have an answer. The Forgiveness Application explicitly states that borrowers should exclude (or add back) employees from their FTE calculation who meet any of the following four criteria during the covered period or alternative payroll covered period:

1. Employees for which the borrower made a good-faith, written offer to rehire (for the same salary/wages and same number of hours) which was rejected by the employee (regardless of the reason);
2. Employees who were fired for cause;
3. Employees who voluntarily resigned; or
4. Employees who voluntarily requested and received a reduction of their hours.

Concerning exemption (1), the Forgiveness IFR requires borrowers to maintain records documenting their offer of rehire to an employee and the employee's rejection of the offer. Also, the borrower must inform the applicable state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer. Kentucky's Work Refusal Form will assist the Borrower in meeting the requirement to inform the state unemployment insurance office.

Borrowers should be aware that the exceptions defined above only apply to scenarios that existed during either the covered period or alternative payroll covered period (whichever elected by the borrower) and not to any optional historical reference period.

What employees should I include in the salary/wage reduction calculation?

Despite the various modifications, interpretations and "de minimis" exemptions to the initial language in the CARES Act, one thing has (surprisingly) remained consistent throughout—the category of employees excluded from the salary/wage reduction calculation. Under Section 1106 of the CARES Act, only employees "who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than $100,000" are taken into account for purposes of the salary/wage reduction calculation. Both the Forgiveness Application and IFR confirm that borrowers should exclude an employee who received an annualized paycheck in excess of $100,000 during any single pay period in 2019 from this calculation. Furthermore, given the clarification that bonus payments constitute a similar form of compensation to salaries and wages, additional employees may be excluded from the calculation.

How do I calculate the salary/wage reduction?

The Forgiveness Application clarified that the time period of January 1, 2020 to March 31, 2020 is the specific historical period to compare employee salary/wages when calculating any reduction in forgiveness. Although the CARES Act initially referenced a reduction in "total salary or wages" for any employee, it became clear within the Forgiveness Application that the reduction should be applied to the base annual salary or hourly rate wage of each employee (excluding bonuses, overtime, etc.). Any dollar reduction in excess of 25% of an employee's average base salary/hourly rate between January 1 to March 31, 2020 and the eight week covered period or alternative payroll covered period could potentially reduce a borrower's forgiveness amount, unless the safe harbor is achieved.

This information is valid as of June 4, 2020 at 11:00 a.m.

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Forgiveness reductions: an overall summary

Despite the Forgiveness Application and IFR providing much needed definitions and clarity into how these potential reductions are calculated, there are still uncertainties and some questions left unanswered. The skinny is this: if a borrower already knows that there was no reduction in FTEs and/or base annual salaries or hourly wage rates for its employees—great! Just make sure you retain documentation to prove it, and there is no need to calculate any potential reduction in forgiveness.

For all other borrowers who are not sure or know that a reduction exists, a brief summary of the steps to determine each reduction can be found below.

a. *FTE reduction*

1. For each employee who was paid, calculate FTE
2. Determine if the safe harbor qualification is met
3. If safe harbor is not met, calculate the FTE reduction quotient

b. *Wage and salary reduction*

1. Exclude ineligible employees
2. For each eligible employee, determine if pay was reduced by greater than 25%
3. Determine if the safe harbor qualification is met
4. If safe harbor is not met, calculate the salary/wage reduction

As with all things PPP related, the guidance seems to be continually evolving, and what we know today may be completely different tomorrow (refer to "Breaking News" section above). As always, we will continue to monitor new developments and provide updates as soon as possible.

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