

LEGAL UPDATES

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SBA Amends PPP Forgiveness Rules to Conform with PPP Flexibility Act

In an effort to update previously-issued rules on Paycheck Protection Program (PPP) loan forgiveness following the recent enactment of the PPP Flexibility Act, the Small Business Administration (SBA) has revised certain portions of its previously-released Loan Forgiveness Rule and Loan Review Rule. These revisions can be found in the SBA's June 22, 2020, Interim Final Rule. This alert provides a summary of the important changes to PPP loan forgiveness effectuated by this new Interim Final Rule. For a more in-depth discussion of PPP loan forgiveness, visit our Loan Forgiveness FAQ article.

Borrowers May Apply for Loan Forgiveness at Any Time

Borrowers that have used all of their PPP loan proceeds for which they are requesting forgiveness may submit their loan forgiveness application *at any time* on or before the maturity date of the loan. This includes applying for forgiveness prior to the end of the borrower's covered period.

Reduction in Loan Forgiveness for Reduced Salary or Wages Is Clarified

The CARES Act provides that the amount of loan forgiveness will be reduced by the amount by which – during the covered period – there is a reduction in total salary or wages for any employee that is in excess of 25% of the total salary or wages of such employee during the period from January 1, 2020, to March 31, 2020 (excluding reductions for employees making in excess of \$100,000). The SBA's new rule clarifies that borrowers who elect to apply for forgiveness prior to the end of their covered period must still account for any salary or wage reduction *through the end* of such covered period.

The new rule gives an example of a borrower that is using a 24-week covered period. This borrower reduced a full-time employee's weekly salary from

\$1,000 per week during the reference period to \$700 per week during the covered period, with an FTE of 1.0. In this case, the first \$250 (25% of \$1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list \$1,200 as the salary/hourly wage reduction for that employee (the extra \$50 weekly reduction multiplied by 24 weeks). *If the borrower applies for forgiveness before the end of the 24-week covered period, it must account for the salary reduction for the full 24-week covered period (totaling \$1,200).*

De Minimis Exemptions to Reductions in Loan Forgiveness Based on Employee Availability

In its first interim final rule on loan forgiveness, the SBA provided three different *de minimis* exemptions to reductions in loan forgiveness. One such exemption related to employees who had been laid off, or had hours reduced, and then rejected the borrower's offer to rehire or to restore hours. Because the PPP Flexibility Act provided a similar (although not identical) *de minimis* exemption based on employee availability, the SBA has indicated that the new statutory exemption supersedes the previous exemption.

Specifically, for borrowers that reduced the hours of an employee and then offered to restore such hours, the borrower's loan forgiveness will not be reduced, and the borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if: (a) the borrower made a good faith, written offer to restore the reduced hours of such employee; (b) the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the reduction in hours; (c) the offer was rejected by such employee; and (d) the borrower has maintained records documenting the offer and its rejection.

Now separately, a borrower's loan forgiveness amount will not be reduced if the borrower is able to document, in good faith: (a) an inability to rehire individuals who were employees of the borrower on February 15, 2020; and (b) an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020. The SBA retained the requirement that the borrower inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection. The documents that borrowers should maintain to show compliance with this exemption include, for example, the written offer to rehire an individual, a written record of the offer's rejection, and a written record of its efforts to hire a similarly qualified individual.

Contact Us

If you have further questions or require more information regarding this update, please contact Jessica Zeratsky, Christopher W. Peterson or your Husch Blackwell attorney.