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CORONAVIRUS SPECIAL REPORT

PAYCHECK PROTECTION PROGRAM (PPP) CHANGES AND NEXT STEPS

As of June 4, 2020

On Wednesday, June 3, the Senate passed H.R. 7010, the Paycheck Protection Program Flexibility Act of 2020. The House passed the bill on Thursday, May 28. The President is expected to sign the bill into law in the next few days. **H.R. 7010 makes significant changes to the PPP. This report outlines what has changed as a result of H.R. 7010, and what hasn't.**

However, it is important to remember that the SBA and Treasury will have to issue new instructions to implement changes, so borrowers will have to wait for those updated instructions before applying for forgiveness. **That guidance could take anywhere from a week to several weeks to be released**. We will keep you updated in real time as new guidance is issued.

WHAT HAS CHANGED?

COVERED PERIOD	
Original Provision	**Updated Provision**
Borrowers must spend loan funds within **eight weeks** of receiving the loan.	Borrowers must spend loan funds within **24 weeks** of receiving the loan, or by **December 31, 2020**, whichever is earlier. Borrowers who received their PPP loan before H.R. 7010 was enacted **may choose to keep their original 8-week period**, and not extend to 24 weeks.

LIMITATION ON NON-PAYROLL EXPENSES	
Original Provision	**Updated Provision**
At least **75%** of the loan must be used for payroll expenses if the borrower seeks maximum loan forgiveness. No more than **25%** can be spent on nonpayroll costs.	At least **60%** of the loan must be used for payroll expenses if the borrower seeks maximum loan forgiveness. No more than **40%** can be spent on nonpayroll costs.

LOAN REPAYMENT TERMS	
Original Provision	**Updated Provision**
Two-year loan terms at 1% fixed rate.	New PPP loans disbursed **after** enactment of H.R. 7010 will have five-year loan terms, still at 1% rate. Terms for loans that were disbursed **before** enactment of this bill can be modified upon mutual agreement between the lender and borrower. However, there is no requirement that a lender modify terms, and no guidance on what happens if there is an impasse. We will watch implementation of this provision closely.
Loan payments are deferred for 6 months from the date the loan is disbursed.	Loan payments are deferred until the date on which the amount of loan forgiveness is remitted to the lender.
No comparable provision.	Borrowers who do not apply for forgiveness will be required to begin making payments no earlier than 10 months after the last day of the "covered period."

PAYROLL TAX DEFERMENT	
Original Provision	**Updated Provision**
Borrowers cannot deduct payroll tax expenses that would otherwise be deductible if they use their PPP loan to cover the expense and the loan is forgiven.	Removes the limitation on borrowers' use of the payroll tax deferment.

LOAN FORGIVENESS REDUCTION FOR FTE RETENTION/RECRUITMENT	
Original Provision	**Updated Provision**
Borrowers avoid FTE-based reductions in their loan forgiveness amount for two specific circumstances. • A borrower's loan forgiveness amount will not be reduced for any employee who is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period. • If the borrower eliminates reductions in salaries or FTE employees by June 30, 2020, the borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required due to reductions in salary or FTE employees.	Maintains both provisions, and **makes June 30, 2020 safe harbor date an option for those borrowers who choose to elect it**. Adds two circumstances where borrowers can avoid reductions in loan forgiveness. Borrower must document the following: • An inability to restore FTE headcount on or before December 31, 2020, either because furloughed or laid off employees decline to return, or an inability to hire similarly qualified replacement employees, OR • An inability to return to the same level of business activity as before February 15, 2020, because of government guidance or mandates during the period of March 1, 2020 through December 31, 2020*

***Borrowers should assume that SBA and Treasury will release additional guidance on how to apply these previsions. The specific provision states:**

(7) EXEMPTION BASED ON EMPLOYEE AVAILABILITY.—During the period beginning on February 15, 2020, and ending on December 31, 2020, the amount of loan forgiveness under this section shall be determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible recipient, in good faith—

(A) is able to document—

(i) an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and

(ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or

(B) is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19.

WHAT HASN'T CHANGED?

NOTE: Additional guidance may be released to harmonize these preexisting requirements with the changes in H.R. 7010, but for the time being, borrowers should assume these provisions are still in effect.

Costs Eligible for Loan Forgiveness

Payroll Costs Eligible for Loan Forgiveness

The following payroll costs are eligible for loan forgiveness:

- Payroll costs **paid** during the "covered period" or "alternative payroll covered period" (as described in the PPP Loan Forgiveness Application)
    - Payroll costs are considered "paid" on the day that paychecks are distributed or the day that you originate a direct deposit (ACH credit transaction).
    - Based on previous guidance, for employees who make more than $100,000 annually, borrowers can count up to $100,000 paid per employee (on an annualized basis) as a forgivable cost

- Payroll costs **incurred** during the "covered period" or "alternative payroll covered period" AND paid on or before the next regular payroll date, even if the payroll date is after the "covered period" or "alternative payroll covered period"
    - Payroll costs are considered to have been "incurred" on the day the employee's pay is earned. For employees who are not performing work but are still being paid, payroll costs are incurred based on the schedule established by the borrower – typically, each day that employee would have worked.
    - Based on previous guidance, for employees who make more than $100,000 annually, borrowers can count up to $100,000 incurred per employee (on an annualized basis) as a forgivable cost

- For employees whose compensation does not exceed $100,000 annually, payroll costs can include (even for those employees are not able to perform their duties due to lack of economic demand or public health considerations): Commission payments; bonuses; and hazard pay.
    - While not explicitly stated, the guidance implies that commission payments, bonuses, and hazard pay for employees who make over $100,000 per year CANNOT be included as a forgivable cost

- Payroll costs paid or incurred for owner-employees and self-employed individuals
    - Capped at the lesser of 8/52 of 2019 compensation, or $15,385 per individual
    - Other restrictions apply depending on your business model – refer to pages 11-12 of the IFR on Loan Forgiveness

Nonpayroll Costs Eligible for Loan Forgiveness

Note: While there is the option of using an "alternative payroll covered period" to calculate payroll costs for forgiveness, nonpayroll costs must be calculated based on the "covered period," which is the 8-week period beginning the day the borrower receives funds.

The following nonpayroll costs are eligible for forgiveness:

- Nonpayroll costs **paid** during the 8-week "covered period"
- Nonpayroll costs **incurred** during the 8-week "covered period" AND paid on the next regular billing date, even if that date is after the "covered period"

Reductions to Loan Forgiveness Amount

In calculating the loan forgiveness amount, the borrower may exclude any reduction in full-time equivalent employee headcount attributable to an individual employee if:

- The borrower made a good faith written offer to rehire or restore the reduced hours of the employee during the payroll period or the alternative payroll covered period, AND
- The offer was the same salary or wages and same number of hours as the employee had before the employee was furloughed or his/her hours were reduced.

AND:

- The employee rejected the offer, AND
- The borrower maintained records documenting the offer and its rejection, AND
- Within 30 days of receiving the rejection of the offer, the borrower informed the State Unemployment Insurance Office of the employee's rejection of offer of reemployment.

Reductions to Loan Forgiveness Amount Due to Salary or Wage Reduction

If a borrower reduces an employee's salary or wages by more than 25% (compared to the base salary or wages between January 1, 2020, and March 30, 2020), the borrower must reduce the total forgiveness amount by the total dollar amount of salary or wage reductions above 25%. This reduction must be calculated on a per-employee basis, not in the aggregate.

The salary/wage reduction applies only to the portion of the decline in salary and wages that is NOT attributable to FTE reduction. This is to avoid being penalized for both an FTE reduction, **and** the resulting salary reduction.