

## **The Paycheck Protection Program: Additional Loan Forgiveness Guidance**

On August 4, 2020, the Treasury Department and the Small Business Administration (the “SBA”) released their latest installment of Frequently Asked Questions on Paycheck Protection Program Loan Forgiveness (“FAQs”).<sup>1</sup> The FAQs clarify some of the previously released guidance but still leave some questions unanswered. The FAQs elaborate on how to calculate payroll costs, non-payroll costs, and loan forgiveness reductions. The FAQs provide helpful examples, including how to determine the covered period or alternative covered period, how to calculate payroll costs for partial pay periods, how to determine which payroll and non-payroll costs are eligible for forgiveness, how to determine the owner compensation that is eligible for loan forgiveness, and how to determine whether and how to calculate the reduction in the loan forgiveness amount arising from reductions in employee salary or hourly wages. Below we highlight the more salient points covered by the FAQs. For a full overview of the Paycheck Protection Program, *see* our memorandum “The Paycheck Protection Program: Where the Program Stands Now” found [here](#).

### **I. Timing of Interest Accrual and Payments on Loans Not Fully Forgiven**

If a borrower submits a timely loan forgiveness application, the borrower is not required to make any payments on the loan until the forgiveness amount is remitted to the lender by the SBA or forgiveness is denied. Interest accrues on the amount of the loan not forgiven during the time period between the disbursement of the loan and the SBA remittance of the forgiveness amount. The borrower is required to pay the accrued interest on the amount of the loan that is not forgiven prior to maturity. The lender must notify the borrower of the remittance by the SBA of the loan forgiveness amount (if any) and the date on which the first payment of any amount not forgiven is due.

### **II. Seasonal Borrower Loan Forgiveness Period**

If a seasonal borrower elects to use a 12-week period to calculate the Paycheck Protection Program loan amount, it must use the same 12-week period as the reference period for calculating any reduction in the loan forgiveness amount. Prior to the FAQs, it was unclear if the borrower could select one of the other reference periods (February 15, 2019 to June 30, 2019 or January 1, 2020 to February 29, 2020) for purposes of forgiveness.

### **III. Forgivable Payroll Costs**

When calculating cash compensation for the purposes of determining payroll costs, all borrowers should use the gross amount, before deductions for taxes, employee benefits payments, and similar payments. Forgivable payroll costs include the amount paid by borrower to cover lost tips or commissions and hazard pay and bonuses, not to exceed an annualized amount of \$100,000 per employee. Payroll costs also include the healthcare premiums and retirement benefits paid or incurred by the borrower, not the employee, during the covered period, provided that none of the payments may be accelerated.

### **IV. Forgivable Interest Payments**

Although interest on unsecured credit is a permitted use of a loan received under the Paycheck Protection Program, payments of interest on unsecured credit are not eligible for loan forgiveness because the loan is not

---

<sup>1</sup> The full set of FAQs can be found [here](#).

---

# CAHILL

---

secured by real or personal property. Only payments of interest in respect of business mortgages on real or personal property (for example an auto loan) are eligible for loan forgiveness. In addition, interest payments on a mortgage loan that existed prior to February 15, 2020 and is refinanced during the covered period are eligible for forgiveness.

## V. Forgivable Lease Payments

Lease payments made under leases that existed prior to February 15, 2020 and are renewed during the covered period are eligible for forgiveness. The renewed lease is considered an extension of the existing lease.

## VI. Salary and Wage Reduction Safe Harbor

The FAQs provide helpful examples to assist borrowers in calculating the impact of salary and wage reductions in the forgiveness application. The examples make clear that, for hourly employees, only a reduction in the hourly wage will be taken into account in this safe harbor, not the reduction in total wages that an hourly employee may experience due to a reduction in overall hours worked. Instead, the reduction of hours worked will be reflected in a separate calculation of full-time equivalency for purposes of determining a reduction in loan forgiveness. In addition, the examples provide that if a borrower selects the 24-week covered period, the wage reduction will impact forgiveness for the full 24-week period, even if the borrower applies for forgiveness before the end of the 24-week period.

This attempt at clarification, however, leaves some important questions unanswered for borrowers seeking to satisfy the safe harbors. For example, what is the relevant date for determining compliance with the safe harbor? The rules right now only indicate that the safe harbor must be met by December 31, 2020 for borrowers using the 24-week covered period and by June 30, 2020 for borrowers using the 8-week covered period. The example in the FAQs suggests that applying for loan forgiveness early may be disadvantageous if a borrower may still be able to meet the safe harbor before the end of the year. Similarly, what if a borrower meets the safe harbor sometime during the 24-week covered period when its loan proceeds are exhausted but then, as a result of continued or renewed restrictions, the borrower finds it necessary to reduce headcount or salaries and wages again? What if a borrower did not meet the safe harbors at the end of its covered period but does on the date it applies for forgiveness? What if a borrower uses the 8-week period and met the safe harbor by June 30 but no longer does so when it applies for forgiveness? Many borrowers who received loans early on in the program will have used their full loan proceeds well before the end of 24 weeks. Should there be a shorter period these borrowers can use to satisfy the safe harbors?

## VII. Conclusion

Though the FAQs clarify many open questions for both borrowers and lenders, they still leave many questions unanswered. As small businesses begin to apply for loan forgiveness, additional guidance from the Treasury Department and the SBA would be welcome.

\* \* \*

If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email authors Helene R. Banks at 212.701.3439 or [hbanks@cahill.com](mailto:hbanks@cahill.com); or Robyn Sablove at 212.701.3753 or [rsablove@cahill.com](mailto:rsablove@cahill.com); or email [publications@cahill.com](mailto:publications@cahill.com).