



CCM COVID-19 ALERT

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Clingen Callow & McLean, LLC

SBA Issues Long-Awaited Guidance on PPP Loan Forgiveness

On Friday, May 15, 2020, the U.S. Small Business Administration issued its long-awaited guidance on loan forgiveness under the Paycheck Protection Program (“PPP”). The instructions were in the form of a Loan Forgiveness Application Instructions for Borrowers (the “Application”), found [here](#).

The Application and related instructions answered a number of key questions that have frustrated PPP borrowers, specifically:

Payroll Costs

The Application clears up a major concern for PPP borrowers with payroll dates that fell outside the 56-day “covered period” during which payroll costs are measured for purposes of PPP loan forgiveness.

First, the Application instructions provide for an “alternative payroll covered period,” which permits borrowers with a biweekly or more frequent payroll schedule to elect to calculate eligible payroll costs using an 8-week/56-day period that begins on the first day period following their PPP loan disbursement date. The application provides an example that if a borrower received its PPP loan proceeds on Monday, April 20, and the first day of its pay period following its PPP loan disbursement is Sunday, April 26, the first day of the alternative payroll covered period is April 26, and the last day of the alternative covered payroll

period is Saturday, June 20 (56 days after the first day), under the alternative covered payroll period.

Second, the definition of “Eligible payroll costs” makes clear that payroll costs are considered incurred on the day the employee’s pay is earned. “Payroll costs incurred but not paid during the Borrower’s last pay period of the Covered Period (or Alternative Payroll Covered Period) are eligible for forgiveness if paid on or before the next regular payroll date.”

The Application also makes clear that for any employee with an annual salary in excess of \$100,000 the amount of the salary eligible to be considered under payroll cost is limited to \$15,385, rather than the actual amount of payroll paid to the affected employee.

Rent and Utilities

The Application instructions adopt a liberal definition of payments for rent and utilities. Specifically, the Application states that “Eligible nonpayroll costs [including rent and utilities]. . . must be paid during the Covered Period or 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.” This appears to provide flexibility to pay accrued rent and utilities, although the SBA may issue future guidance that will restrict a borrower’s ability to do this.

Use of at Least 75% of Loan Proceeds for Payroll Costs

Prior to publication of the Application, there was concern over whether a PPP borrower needed to use at least 75% of PPP loan proceeds for payroll costs in order for any of the PPP loan to be eligible for forgiveness.

The Application makes clear that a PPP loan is eligible for forgiveness even if 75% of the PPP loan is not used for payroll costs. The Application states that “eligible nonpayroll costs cannot exceed 25% of the total forgiveness amount.”

Reduced Workforce and Compensation Reduction

The Application is consistent with prior SBA guidance with respect to reductions in the amount of PPP loan forgiveness if the number of “full time equivalent employees” or compensation (for those employees with annual salaries less than \$100,000) is reduced. The Application also provides for a calculation of the “FTE Reduction Safe Harbor” that can restore PPP loan forgiveness if the PPP borrower restores employee headcount and/or compensation reductions by the safe harbor date of June 30, 2020.

The Application provides long-awaited guidance to PPP borrowers seeking to determine how to calculate PPP loan forgiveness. Employers should also welcome the flexible timing on measuring payroll costs and nonpayroll costs, which may improve their ability to have all or a major part of the PPP loan forgiven.

If you have questions about the Application, PPP loan forgiveness or other aspects of the PPP loan program, please contact CCM.

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