COVID-19 Alert: PPP Loan Forgiveness Portal

PPP Loan Forgiveness Portal Opens; SBA Issues New Forgiveness Rules

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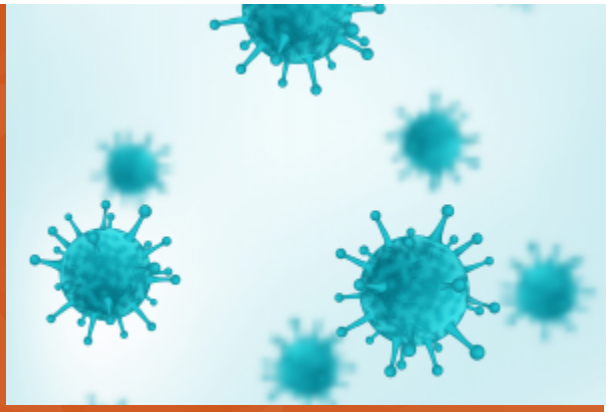

On August 10, 2020, the Small Business Administration (the "SBA") opened the "Forgiveness Portal" – the administrative system that permits lenders of Payroll Protection Program ("PPP") loans to accept forgiveness applications from PPP loan recipients. In connection with the launch of the Forgiveness Portal, the SBA has published a *Frequently Asked Questions (FAQs) on PPP Loan Forgiveness* (the "FAQs"). The FAQs follow, and supplement, the detailed instructions issued by the SBA in connection with the publication of the PPP Forgiveness Application, and revised versions of the same, described here.

The FAQs address and clarify several aspects of the forgiveness application process. Of particular note:

- General Loan Forgiveness: The FAQs clarify that "*sole proprietors, independent contractors, and self-employed individuals who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form automatically qualify to use the Loan Forgiveness Application Form 3508EZ or lender equivalent and should complete that application.*" The FAQs also instruct that as long as a borrower submits its loan forgiveness application within ten months of the completion of the applicable covered period, the borrower is not required to make any loan re-payments until the forgiveness amount is remitted to the lender by the SBA.

- Loan Forgiveness Payroll Costs: The FAQs address the amount of "owner-employee" compensation that is eligible for loan forgiveness, identifying forgiveness "caps" for owners, who are also employees, of C and S Corporations, self-employed individuals, general partners, and LLC owners. For example, for a C-Corporation borrower using a 24-week covered period, the forgivable amount of cash compensation that may be paid to an owner-employee of the C-Corporation borrower is capped at 2.5/12 of the owner-employee's 2019 employee cash compensation *up* to $20,833.

The FAQs do not define "ownership" for these purposes, however. As such, several questions remain: Is an employee of a C-Corporation who owns a *de minimis* amount of common stock an "owner?" Is an employee who owns phantom shares of an employer an owner? Is an employee who has unexercised or unvested options an owner? Clarity on these questions is expected in future guidance from the SBA.

- Loan Forgiveness Nonpayroll Costs:The FAQs clarify the types of nonpayroll costs that are forgiveness expenses. For example, the FAQs clarify that payments of interest on business mortgages on real or personal property (such as an auto loan) are eligible for loan forgiveness. However, interest on unsecured credit is not eligible for loan forgiveness.

- Loan Forgiveness Reductions: The FAQs clarify how forgiveness deductions, that are triggered as a result of employee headcount or wage reductions, are calculated.

Although lenders are now authorized to accept and process PPP borrower forgiveness applications, it appears that most lenders are intent to delay the process. As reported by *The American Banker*, in response to shifting SBA instructions and the potential of legislative changes to the PPP now pending in Congress, a majority of commercial banks, including JPMorgan Chase, the PPP's largest lender, have decided *not* to accept forgiveness applications until late September. As such, with 5.2 million PPP loan outstanding, a backlog of forgiveness applications is expected, and PPP borrowers should anticipate delays in the processing of forgiveness applications.

Morse continues to review the evolving regulatory landscape related to PPP loans. Please contact the Firm should you have questions concerning this subject, or any other COVID-19 response matters.

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