



1. To Frame our Discussion – Page 14 of SBA Interim Final Guidance Effective April 2, 2020 – **“SBA will issue additional guidance on loan forgiveness”**. The information below is based on the governmental guidance provided through April 7, 2020. The information below includes direct information from the guidance available. Due to the amount of uncertainty currently present, we have tried to limit subjective interpretations to minimize the possibility for misinterpretations during this time of uncertainty. When we have made interpretations we have taken a conservative approach, acknowledging more aggressive approaches may become appropriate. It is expected that the additional guidance issued will shed light on the topics covered below. Links to the guidance currently available are available at the bottom of this document.

## 2. ALLOWABLE USES

- **From Bill H R 748** During the covered period, an eligible recipient may, in addition to the allowable uses of a loan made under this subsection, use the proceeds of the covered loan for—
  - (I) payroll costs;
    - Includes:
      - (AA) salary, wage, commission, or similar compensation;
      - (BB) payment of cash tip or equivalent;
      - (CC) payment for vacation, parental, family, medical, or sick leave;
      - (DD) allowance for dismissal or separation;
      - (EE) payment required for the provisions of group health care benefits, including insurance premiums;
      - (FF) payment of any retirement benefit; or
      - (GG) payment of State or local tax assessed on the compensation of employees; and
      - (bb) the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period;
    - Do not include:
      - (aa) the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period;
      - (bb) taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period;
      - (cc) any compensation of an employee whose principal place of residence is outside of the United States;
      - (dd) qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–127); or
      - (ee) qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116–127);
  - (II) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
  - (III) employee salaries, commissions, or similar compensations;
  - (IV) payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
  - (V) rent (including rent under a lease agreement);
  - (VI) utilities; and
  - (VII) interest on any other debt obligations that were incurred before the covered period.

- **To consider** – Covered period for allowable uses is February 15, 2020 - June 30, 2020. The covered period is greater in length than the forgiveness period. Loan proceeds can be used for a greater period of time than just the 8 weeks that they are eligible for forgiveness.
- **To consider** – We are not currently recommending using proceeds to pay independent contractors.
- **To Consider** – The allowable uses includes “interest on any other debt obligations that were incurred before the covered period”. The forgivable uses does not include this language, but limits the forgivable piece to mortgage interest. Our interpretation is that this means that the loan proceeds can be used to pay certain interest amounts that are not forgivable.

### 3. FORGIVABLE USES

- **From Bill H R 748** An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period:
  - (1) Payroll costs. – “payroll costs” has the meaning given that term in paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act. As outlined above.
  - (2) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation). – Defined means any indebtedness or debt instrument incurred in the ordinary course of business that— (A) is a liability of the borrower; (B) is a mortgage on real or personal property; and (C) was incurred before February 15, 2020;
  - (3) Any payment on any covered rent obligation. – Defined means rent obligated under a leasing agreement in force before February 15, 2020
  - (4) Any covered utility payment. – Defined means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020
- **To consider** – The covered period that applies to costs eligible for loan forgiveness is the 8 weeks subsequent to loan origination. At this time, we believe the loan “originates” on the date the funds are received. However, no guidance defines that date.
- **To consider** – Gross compensation eligible for forgiveness is limited to a pro-rated portion of \$100k. For 8 weeks, this is approximately \$15k.
- **To consider** – There is currently no exclusion of rental payments to related parties, but an agreement is needed.
- **To consider** – It appears rental obligations include personal property. At this stage, there is no guidance limiting the rent to real property.

### 4. REDUCTION BASED ON REDUCTION IN NUMBER OF EMPLOYEES

- (A) IN GENERAL.—The amount of loan forgiveness under this section shall be reduced, but not increased, by multiplying the amount described in subsection (b) by the quotient obtained by dividing—
  - (i) the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by
  - (ii)
    - (I) at the election of the borrower—
      - (aa) the average number of fulltime equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019; or
      - (bb) the average number of fulltime equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or
- (B) CALCULATION OF AVERAGE NUMBER OF EMPLOYEES.—For purposes of subparagraph (A), the average number of full-time equivalent employees shall be determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.
- **To consider** - The covered period in this section is the 8 weeks subsequent to loan origination.
- **To consider**- If you believe this section will apply to your business, it would be prudent to begin gathering fulltime equivalent information for 2/15/19-6/30/19 and 1/1/20-2/29/20. Full-time equivalents are based on the definition in the Affordable Care Act, which is 30 hours per week. Non full-time employees are treated as

fractional FTEs based on how what percent of 30 hours per week they work (fractions cannot be greater than 100%).

## 5. REDUCTION RELATING TO SALARY AND WAGES

- **From H R Bill 748** (A) IN GENERAL. The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (B) during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.
- (B) EMPLOYEES DESCRIBED. An employee described in this subparagraph is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000.
- **To consider** - A literal reading of Paragraph A leads one to believe that the 25% reduction is to be calculating by comparing a 13 week quarter to an 8 week covered period. All things equal, that would result is an approximately 38% reduction and a limitation to the forgiveness amount being applied. We do not believe this is the intention of the writers, as it seems to contradict the heart of the Act. Our calculation is set up to prorate the 8 weeks to 13 weeks, but please be aware that at this time there is no guidance to support that approach.

## 6. ELIMINATION OF REDUCTIONS

- **From H R Bill 748** (5) EXEMPTION FOR RE-HIRES.
  - (A) IN GENERAL. In a circumstance described in subparagraph (B), the amount of loan forgiveness under this section shall be determined without regard to a reduction in the number of full-time equivalent employees of an eligible recipient or a reduction in the salary of 1 or more employees of the eligible recipient, as applicable, during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act.
  - (B) CIRCUMSTANCES. A circumstance described in this subparagraph is a circumstance —
    - (i) in which —
      - (I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the number of full-time equivalent employees of an eligible recipient; and
      - (II) not later than June 30, 2020, the eligible employer has eliminated the reduction in the number of full-time equivalent employees;
    - (ii) in which —
      - (I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the salary or wages of 1 or more employees of the eligible recipient; and
      - (II) not later than June 30, 13 2020, the eligible employer has eliminated the reduction in the salary or wages of such employees; or
    - (iii) in which the events described in clause (i) and (ii) occur.
- **To consider** - The Act implies that a company reinstating the workforce and salary and wages that were subject to reduction could do so on June 29 and be in compliance. There is no guidance currently available that that spells out what a business will need to do to prove they have eliminated the reductions. Additionally, the Act does not address how long the reductions have to stay eliminated. It is a big deal, so we expect something to be coming. We acknowledge that the lack of guidance makes planning difficult.
- **To consider** – We believe this says that if you only made one reduction (be it workforce or salaries and wages) you are eligible for the exemption if you eliminate that one reduction, but if you reduced both workforce and salaries/wages you need to eliminate both reductions.

## 7. HOW TO TRACK EXPENSES

- **From the SBA interim final rule** For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness.
- **To consider** - There is nothing authoritative that specifies how these costs need to be documented. It is expected that additional guidance could be coming on this topic. For the time being, we recommend at a

minimum keeping meticulous records through your General Ledger and supporting spreadsheet, so that you can substantiate loan uses upon request.

#### 8. COSTS INCURRED AND PAYMENTS MADE DURING THE COVERED PERIOD

- **From Bill H R 748** An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period.
- **To consider** – This implies that payroll needs to be incurred and paid during the 8 week period. This will not flow naturally for most businesses. We expect guidance will acknowledge this reality and flexibility will be given as to when payment can occur, but in the meantime, be thinking about running a special payroll at the end of 8 weeks to ensure that as many of the costs incurred as possible during the 8 weeks are also paid within 8 weeks.

#### 9. OCCUPANCY COST LIMITED TO 25%

- **From the SBA interim final rule** Not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks / 2.5 months = 56 days / 76 days = 74 percent rounded up to 75 percent). Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program, and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection.

#### 10. MISUSE OF LOAN PROCEEDS

- **From the SBA interim final rule** This interim final rule announces the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act...*What happens if PPP loan funds are misused?* If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.
- **From loan application certifications:**
  - All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
  - The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.
- **To consider** – Proceed with caution. There may be additional guidance coming on this topic, but for the time being, the above language limits using the loan proceeds for uses outside of the allowed uses mentioned above and has significant penalties for knowingly doing so.

#### 11. Links

- [Treasury FAQs](#)
- [SBA Interim Final Rule](#)
- [H.R. 748](#)

