

KRAMER RAYSON LLP

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COVID-19, also known as the Coronavirus, has significantly impacted small businesses in our state and across our country. In response, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act” or the “Act”). The CARES Act was designed to give relief to small businesses in the form of Small Business Interruption Loans, which are administered under the Small Business Administration (“SBA”) Section 7(a) small business loan program. The new “Paycheck Protection Program” (“PPP” or the “Program”) expands Section 7(a) of the Small Business Act by providing forgivable loans to businesses with 500 or fewer employees. The SBA has now released the promised guidance regarding forgiveness of these PPP loans, which we have summarized below.

A. What is the Process to Obtain Loan Forgiveness?

To apply for forgiveness, businesses must submit the loan forgiveness application to their lender. This application, along with instructions, can be found at sba.gov. The lender has sixty (60) days from the date of receiving the application to make a determination on forgiveness. Additionally, a business may request the SBA review a lender’s decision denying forgiveness within 30 days of receiving the denial notice from the lender. The SBA will then, subject to any SBA review of the loan, remit the forgiveness to the lender if approved. If only a portion of the loan is forgiven, or if the forgiveness request is denied in its entirety, the business must pay the remaining balance due on the loan before the two (2) year maturity date. Notably, the SBA will have different procedures for loans it reviews.

B. What Payroll Costs are Eligible for Forgiveness?

The SBA has clarified some questions regarding “payroll costs” that are eligible for forgiveness. Specifically, salary, wages, or commission payments to furloughed employees; bonuses; or hazard pay during the covered period are eligible for loan forgiveness, as long as the individual’s prorated annual salary for the covered period does not exceed \$100,000. Additionally, for employees who are not performing work but are still on the business’s payroll, payroll costs are considered “incurred” based on the schedule established by the business (typically, each day that the employee would have performed work). However, there are caps on the amount of loan forgiveness that is available for owner-employees and self-employed individuals’ own payroll compensation. The SBA has specified that the amount of loan forgiveness for owner-employees and self-employed individuals’ payroll compensation can be no more than the lesser of (A) 8/52 of 2019 compensation (i.e., approximately 15.38% of 2019 compensation) or (B) \$15,385 per individual in total across all businesses. Owner-employees will be capped by the amount of their 2019 employee cash compensation and employer retirement and health contributions made on their behalf. Schedule C filers are capped at the amount of their owner compensation replacement, calculated based on 2019 net profit. Further, general partners are capped by the amount of their 2019 net earnings from self-

employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. Finally, no additional forgiveness will be provided for retirement or health insurance contributions for self-employed individuals.

C. Calculating the Eight-Week Covered Period

The SBA has recognized that the 8-week covered period for loans does not always align with businesses payroll cycles. Therefore, a business with a bi-weekly (or more frequent) payroll cycle may elect to use an alternate payroll covered period that begins on the first day of the first payroll cycle in the covered period and continues for the following 8 weeks.

D. Reductions to Forgiveness Amount

The CARES Act requires certain reductions in a business's forgiveness amount based on reductions in full-time equivalent employees or in employee salary and wages. However, there is an exemption to forgiveness reductions for businesses who have rehired employees and restored salary and wage levels by June 30, 2020. The SBA and Treasury have also adopted an exemption for businesses who make a written offer to rehire employees or restore employee hours, even if the employees have not accepted. Additionally, a business's loan forgiveness will not be reduced if an employee was fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction. Finally, to ensure that businesses are not doubly penalized, the SBA clarified that the salary/wage reduction applies only to the portion of the decline in employee salary and wages that is not attributable to the full-time equivalent employee reduction. The PPP Interim Final Rule-Requirements-Loan Forgiveness document provides specific examples of how the reduction rules work and can be found on [sba.gov](https://www.sba.gov).

E. Calculating Full-Time Equivalent Employees

The SBA defines full-time equivalent employees as those employees who work forty (40) hours or more on average each week. In calculating its number of full-time equivalent employees, businesses should divide the average number of hours paid for each employee per week by 40, capping this quotient at 1. For part-time employees, businesses may calculate full-time equivalency either by (1) using the average number of hours the part-time employee was paid per week or (2) using a full-time equivalency of 0.5 for each part-time employee. Businesses have the option of selecting only one of these two methods and must apply that method consistently to all part-time employees.

F. What Documents are Required to Obtain Forgiveness?

The loan forgiveness application form details the documentation that is required, which includes: PPP Loan Forgiveness Calculation Form, PPP Schedule A, payroll documentation, documentation showing full-time equivalent employees, and documents verifying the existence of nonpayroll costs (obligations/services in existence prior to February 15, 2020 and eligible payments). Furthermore, the SBA also requires that businesses maintain certain documentation, although it is not required to be submitted, including PPP Schedule A Worksheet and documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests

by any employee for reduction in work schedule. The full list of documents required can be found on the loan forgiveness application form.

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Our professionals are now back in the office serving clients while following the appropriate social distancing precautions. We also remain ready and willing to assist you remotely through telephone, email, and videoconferences with the CARES Act and any other issues that may arise during this challenging time. Should you need to consult with one of our professionals, do not hesitate to contact us.