

PPP Loans: Calculation of Forgiveness

During the last several weeks, there has been a great deal of attention paid to the availability and eligibility of PPP loans. Guidance from the SBA has been slow and at times inconsistent. With the funding mostly complete, attention has now turned to the critical element of loan forgiveness. Unfortunately, the SBA has not yet issued detailed guidance regarding the calculation of forgiveness and potentially disqualifying conditions (one such potentially disqualifying condition is lack of eligibility for the PPP loan at funding). However, in the meantime companies that receive PPP loans must gather information now necessary to document their future applications for loan forgiveness. This article provides a summary of what we currently know about how forgiveness will be calculated with an eye toward future applications for forgiveness. This information will undoubtedly be modified upon further guidance from the SBA.

How do companies determine the amount of PPP funds eligible for forgiveness?

The amount of loan forgiveness is equal to the amount of PPP funds the borrower spent on eligible items during the 8-week period following the origination of the loan (Measurement Period). Eligible items are:

- Payroll costs (using the definition of payroll costs used to determine loan amount);
- Interest on mortgage obligations incurred before February 15, 2020;
- Rent paid or leases entered into before February 15, 2020; and
- Utilities for services that began before February 15, 2020.

Importantly, not more than 25% of the forgiven amount may be used for non-payroll costs. As a result, companies should ensure that, to the extent possible, the PPP funds are fully expended during the Measurement Period and that at least 75% of PPP funds are applied to eligible payroll costs. Companies should also ensure that adequate documentation is retained to support payroll expenditures during the Measurement Period.

What other factors could impact the amount of forgiveness?

In addition to determining the amount of PPP funds eligible for forgiveness based on eligible expenditures during the Measurement Period, companies must also consider any reduction in their workforce or payroll. Although specific guidance from the SBA is limited, the amount of the loan forgiveness will be reduced based on either a reduction in the Full-Time Equivalent Employees (FTEs) or a reduction in employee compensation during the Measurement Period.

Companies must determine their baseline average number of monthly FTEs, which is calculated using either the period of February 15, 2019 through June 30, 2019, or January 1, 2020 through February 29, 2020 (“Baseline FTEs”). The company must then calculate their number of average monthly FTEs during the Measurement Period (“Current FTEs”). The Current FTEs are divided by the Baseline FTEs and that percentage is multiplied by the company’s payroll cost during the Measurement Period to determine a reduction in forgiveness.

Companies must then determine whether any employee’s wages were reduced by greater than 25% during the most recent quarter when compared to 2019 wages. The amount of reduction of wages in excess of 25% for any employee (other than employees who earned more than \$100,000) is then subtracted from the company’s payroll cost during the Measurement Period.

However, reductions in employment or wages that occurred between February 15, 2020, and April 26, 2020, shall not reduce the amount of forgiveness if, no later than June 30, 2020, the company has fully eliminated the reduction in FTEs or wages referenced above.

Please contact your Bodman attorney for assistance or Darren Burmania at (616) 205-3313 or dburmania@bodmanlaw.com or Adam Weiner at (313) 392-1076 or aweiner@bodmanlaw.com on what this new guidance means for you or your business. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.