



**Van Houten & Associates, PC**  
CERTIFIED PUBLIC ACCOUNTANTS

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Dear Clients and Friends,

**Summary of Latest Developments:** regarding the Coronavirus pandemic that affects taxpayers.

**The SBA has issued the Paycheck Protection Program (PPP) Loan Forgiveness Application and related instructions**, which includes some additional guidance and clarifications on the forgiveness aspect of the program. Currently, there is substantial bipartisan Congressional support to extend the 8-week period to 12 or 16 weeks, but since that has not been passed yet, the forgiveness application uses the 8-week requirement. In addition, there is a bill currently under consideration with bipartisan support to also eliminate the requirement that 75% of the proceeds must be spent on payroll-related costs. Again, since that has not yet been passed, the forgiveness application utilizes this original requirement.

**What important changes or clarifications does the Forgiveness Application and instructions make?**

- The overall limitation on the forgiveness amount related to the requirement that 75% of the expenses paid with the funds is computed by dividing the total allowable payroll costs spent by 75%.
- The calculation for the limitation on forgiveness related to salary reduction should be made ***before*** the calculation for the limitation related to the reduction in full time equivalent (FTE) employees. This sequence reduces overall limitation of forgiveness due to the mathematical calculation.
- The calculation for the limitation on forgiveness related to salary reduction is required to be made on an employee-by-employee basis, but ***ONLY*** for employees who meet ***ALL*** of the following conditions:
  1. The employee was employed during the 56-day (8-week) period after receiving the PPP funds. (No reduction is required for workers who were not paid wages during this 56-day period, which is an employer-friendly change/clarification.)
  2. The employee is not an owner-employee, a self-employed individual, or a partner.
  3. The employee did not receive annualized gross salary (cash compensation not including benefits) greater than \$100,000 in any pay period in 2019 (calculated as  $\$100,000/52 \text{ weeks} = \$1,923.07$  for weekly payroll or  $\$100,000/26 \text{ pay periods} = \$3,846.15$  for biweekly payrolls.)
- The limitation on forgiveness related to salary reduction does not apply to employees who did not work for the borrower in 2019.

- The safe harbor for the limitation on forgiveness related to salary reduction is also considered on an employee-by-employee basis and only applies if the average annual salary for each employee decreased during the period starting 2/15/20 through 4/26/20. If the average annual salary did decrease during that period for an employee, as long as the employer increases the employee's salary to the level it was at 2/15/20 by June 30,2020, then the safe harbor applies to that employee.
- The limitation on forgiveness related to a reduction in full-time equivalent (FTE) employees is made on a collective basis, not on an employee-by employee basis. Therefore, a company who lost employees can still escape any reduction in forgiveness if either those employees are rehired, or new employees are hired to replace the lost employees.
- The following employees are not included in the FTE calculations for purposes of the FTE reduction limitation:
  1. Any furloughed employee who refuses a written offer to rehire at same pay and same hours during the 56-day (8-week) period.
  2. Any employee who was fired for cause and not replaced.
  3. Any employee who voluntarily resigned and was not replaced.
  4. Any employee who voluntarily requested and received a reduction of their hours.
  5. Any owner-employee, self-employed individual, or partner.
- The safe harbor for the limitation on forgiveness related to a reduction in FTE employees only applies if the total average FTE count decreased during the period starting 2/15/20 through 4/26/20. If the total average FTE employee count did decrease during that period for the employer, as long as the employer increases the FTE count to the level it was at 2/15/20, then no limitation will apply to the borrower for any reduction in FTE employees.
- To assist with timing of payroll, the instructions allow for an 'Alternative Payroll Covered Period' as opposed to the original 8-week covered payroll period that begins on the day the PPP funds were received. This 'Alternative Payroll Covered Period' would start on the first day of the first payroll period that begins after the receipt of the PPP funds and would last for 56 days (8 weeks).
- Payroll is considered paid when paychecks are distributed to employees or an ACH transaction is originated.
- Payroll costs are considered incurred on the day the employee's pay is earned.
- To be included in the forgiveness amount, payroll costs must be paid or incurred during the 56-day chosen period. Payroll costs incurred but not paid during the borrower's last pay period are eligible for forgiveness if they are paid on or before the next regular payroll date.
- Eligible non-payroll costs must be paid during the original 56-day (8-week) period OR incurred during the 56-day period and paid on or before the next billing date, even if that date is after the 56-day covered period. Even if a borrower uses the 'Alternative Payroll Covered Period', it will use the original Covered Period for non-payroll costs, which begins the day the PPP funds are received.

- The application has the borrower separate lists of employees into different tables based upon the limitations applicable to those employees. There is one list of employees who will all be subject to the salary reduction limitation calculations, another list of employees that will contain employees that are subject only to the FTE reduction limitations, and a third table that contains a list of any owner-employees, partners, and self-employed individuals.
- The instructions and application limit the forgiveness of salary of any owner-employees, self-employed individuals or partners not only to a cap of \$15,385 (annualized \$100K salary=  $\$100,000/52*8=\$15,385$ ), but also to that particular owner-employee's eight-week equivalent of their applicable compensation in 2019, whichever is lower. This prevents a borrower from getting forgiveness of any raises or bonuses to an owner-employee above the amount paid to the owner-employee in 2019.

**The SBA has also released additional FAQs** regarding the borrower's good-faith certification concerning the necessity of the PPP loan. These clarify that any borrower that received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification in good faith. In addition, the SBA has stated that all loans in excess of \$2 million will be audited to verify that all requirements were met, but these borrowers may still have an adequate basis for making the required good-faith certification based on their individual circumstances. When audited, if SBA determines that a borrower lacked an adequate basis for the required certification, the SBA will seek repayment of any remaining loan balance and instruct the lender that the borrower is not eligible for loan forgiveness, but will not pursue administrative enforcement or referrals to other agencies if the borrower repays the funds.

The government has promised additional regulations and guidance regarding the forgiveness rules and calculations, which we are still awaiting. In addition, if the period to use the funds gets extended to 12 or 16 weeks, many of the small details will no longer matter to many borrowers as they will be able to utilize their funds all on payroll-related costs. We have posted a copy of the Forgiveness Application in pdf form and also in excel form on our website, as well as an AICPA excel forgiveness calculator.

We will continue to keep you updated and are here to assist if needed.

Keep safe and healthy,

**Your VHA Team**