

SBA Releases New Rules for PPP Forgiveness - Allows Payment of Employee Bonuses

 On Friday, May 22, 2020, the SBA and Department of Treasury issued another Interim Final Rule related to the Paycheck Protection Program ("PPP") and requirements for loan forgiveness.

The Rule covers much of the same ground as the Loan Forgiveness Application that was released on May 15. However, there is one important, positive development in the new Rule that is not apparent from the application. As we have predicted and had hoped, **the SBA has now explicitly affirmed that employers may use PPP funds for employee bonuses during the Covered Period.** The rule states: "The Administrator, in consultation with the Secretary, has also determined that, if an employee's total compensation does not exceed \$100,000 on an annualized basis [or \$15,385 during the 8 week Covered Period], the employee's hazard pay [though we advise strongly against using that phrase; use "participation bonus" or "teamwork bonus" or some other positive phrase] and bonuses are eligible for loan forgiveness because they constitute a supplement to salary or wages, and are thus a similar form of compensation." Consistent with our previous interpretation, the rule also confirms that **payments to furloughed employees count as forgivable "payroll costs", even if the employees are not actually working.**



The use of bonus payments should prove very useful in satisfying the requirement to spend at least 75% on "payroll costs" as well as allow employers flexibility to combat overly generous unemployment benefits and/or reward those employees who worked during the crisis while others remained at home.

Other highlights:

- Allowable "nonpayroll costs" continue to include mortgage interest payments and rent for real or personal property; however, advance payments of interest are not forgivable.
- As previously announced in FAQ 40, if an employer offers to rehire a laid-off employee, but the employee declines to come back to work, that employee will not count against the employer's FTE headcount for purposes of reducing loan forgiveness. In addition to requiring that the employer maintain records documenting the offer (which must be in writing) and its rejection, the employer **must** inform the state unemployment insurance office of the rejected offer of reemployment within 30 days.
- Reductions in employee salary or wages in excess of 25% will result in a reduction in the loan forgiveness amount (unless restored by June 30); but this does **not apply** to any reductions in salary or wages attributable to a reduction in hours worked. So, for example, if an employee's hours are reduced from 40 to 20 per week, but the employee's hourly wage stays the same, there will be no reduction due to the employee's lowered compensation. However, such a reduction in hours would affect the FTE headcount test.

The new Interim Final Rule is available here: <https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf>

This memo is intended only as a summary and general overview. If you have any questions or would like legal advice regarding the above or any other employment issue, please contact [David Lawrence](#) or [Sarah Gidley](#).