

PPP Payroll Costs – Don't Jump the Gun

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Since the release of the Paycheck Protection Program (PPP) Loan Forgiveness Application (Application), there have been hundreds of articles detailing the specifics of the Application and the information it provides on costs eligible for forgiveness. As part of our goal to provide our clients with timely, comprehensive and actionable guidance covering the PPP, we are constantly monitoring government publications and guidance put out by others on the topic.

We are continuing to study the latest guidance and awaiting new guidance to clear up ambiguities. At the same time, we have been monitoring releases by other accounting firms, law firms, benefits firms and others. We are concerned that much of the advice being provided is, at best, premature; and perhaps, incorrect. So we caution you: Don't jump the gun.

Costs Eligible for Forgiveness

Let's take a look at what the Application and other guidance say:

- The CARES Act (Act) itself provides that the following costs incurred and payments made during the Covered Period are eligible for forgiveness: payroll costs, any payment of interest on a covered mortgage obligation (but not prepayments), any payment on any covered rent obligation and any covered utility payment.
- The Application provides that payroll costs paid and payroll costs incurred during the eight-week Covered Period are eligible for forgiveness. Payroll is considered paid on the day the paychecks are distributed or the Borrower originates an ACH, and payroll costs are incurred on the day that the employee's pay is earned.
- While the language in the previous bullet appears to refer to the payment of salaries and wages (cash compensation), it is referring to *payroll costs*. The Act provides that payroll costs include health benefits, retirement contributions and certain state payroll taxes in addition to cash compensation.
- The instructions to Schedule A of the Application indicate that the Borrower should enter the amounts paid for: employee health insurance, contributions to retirement plans and employer state and local taxes assessed on employee compensation.

Retirement Contributions

Based on the first and last bullets above, many articles are advising Borrowers that their 2019 accrued and unpaid retirement contributions will be forgivable if they are paid within the eight-week Covered Period (or Alternative Payroll Covered Period). But hang on. The second and third bullets tell us that payroll costs (not just cash compensation) are considered incurred on the day they are earned, and paid on the day the paychecks are distributed. So does the SBA really mean that retirement contributions earned in 2019 are considered paid when the funds are remitted to the plan trustee? Or, do they mean that retirement contributions earned are considered paid on the day the paychecks for the period in which those contributions were earned are distributed? There is a huge difference.

Payroll Costs in General

Some, including us, have speculated that, perhaps, more than 56 days of payroll costs (up to 72 days) will be eligible for forgiveness. This is accomplished by including payroll costs paid at the beginning of the

Covered Period (but incurred prior to the Covered Period) and payroll costs incurred at the end of the Covered Period and paid on or before the next payroll (which is specifically provided for in the Application). Whether or not this is allowed is not at all obvious.

While the Application instructions provide that *payroll costs paid and payroll costs incurred* during the Covered Period are eligible for forgiveness, the Act reverses this. The Act provides *costs incurred and payments made* during the Covered Period are eligible for forgiveness. The differences are subtle, and neither is particularly clear. Is it possible that what is really meant is: payroll costs incurred in the eight-week period and paid no later than the next regular payroll date after the Covered Period are eligible for forgiveness?

Let's also be mindful of the fact that guidance on the \$100,000 salary cap clearly indicates that only eight-weeks of the maximum salary are included in forgivable expenses. The limit given is \$15,385 which is $\$100,000 / 52 \text{ weeks} \times 8 \text{ weeks}$. Also, does it make sense that the Act would forgive up to 72 days of payroll costs for some Borrowers, while other Borrowers are limited to 56 days, based solely on how frequently they run payroll checks and the date the PPP loan funds hit their bank account?

Proceed with Caution

Since the beginning, the Paycheck Protection Program has been fraught with ambiguous guidance and misinformation. This guidance has been doled out in a piecemeal fashion, making it nearly impossible to develop a strategy for maximizing the use of the PPP loan funds.

It should not be so difficult to get it right; unfortunately, it has been. That said, the resolutions to most of the questions that have arisen to date have, ultimately, been resolved based on common sense. While it is entirely possible that the SBA intends for accrued pension costs and all payments of payroll costs made within the eight-week Covered Period to be eligible for forgiveness, it is neither clear nor sensible. So we urge you again, especially if you have some time, not to jump the gun by taking irreversible actions based on unclear guidance or a misinterpretation of the rules.

Contact Us

We will continue to monitor the guidance and to keep you informed as additional information becomes available. Be sure to check our [COVID-19 Resource Center](#), and reach out to your PKFOD engagement team if you have questions.

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