CARES Act: Payroll Protection Program Loan Forgiveness

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On March 27, 2020 the CARES Act was signed into law and provided monetary relief to distressed businesses through various Small Business Administration loan and loan guarantee programs. One of the more popular programs for small businesses, under the CARES Act, is the Payroll Protection Program Loan. Generally, this program provides small businesses (businesses with under 500 employees) with loans to help with business costs related to payroll (salary, wage, commission, etc.), group health benefits, insurance premiums, retire benefits, leave benefits, rent, and utilities. You can read more about the Payroll Protection Program's rules and benefits on Tucker Arensberg's COVID-19 blog site. For purposes of this article, our focus will be to provide a general understanding of the loan forgiveness aspect of the Payroll Protection Program.

In the event a small business obtains a loan through the Payroll Protection Program ("participant"), such loan's principal may be forgiven. Forgiveness on a covered loan is equal to the sum of the payroll costs, interest on certain mortgage obligations, rent obligations, utility payments or additional wages paid to "tipped" employees incurred during the covered 8 week period. Loan forgiveness cannot exceed the principal loan amount and there are limits to the amount of loan forgiveness under the Payroll Protection Program.

The amount of loan forgiveness may be reduced in the event that the participant reduces the size of its workforce. The reduction on the loan forgiveness amount is based on the following:

- Payroll Costs multiplied by the Average Number of Full-Time Equivalent Employees (FTE) per month for the 8 weeks (beginning on Loan Origination date) equals the "Loan Amount"; then
- Divide the "Loan Amount" by either (i) the average number of FTEs per month from February 15, 2019 to June 20, 2019, (ii) the average number of FTEs per month from January 1, 2020 to February 29, 2020, or (iii) for seasonal employers, the average number of FTEs per month from February 15, 2019 to June 30, 2019 which will equal the "Reduction Amount."

The amount of loan forgiveness may also be reduced in the event that employees' salaries are reduced by the participant. The reduction on the loan forgiveness amount is based on the following:

- Payroll cost minus the amount of any reduction in wages that is greater than 25% compared to such employees most recent full quarter (for any employee who did not earn during any pay period in 2019 wages at an annualized rate more than $100,000.00)

Any reductions in workforce or wages that occurred from February 15, 2020 and ended 30 days after March 27, 2020, shall not reduce the amount of loan forgiveness allowed to the participant, if the participant eliminates the reduction in workforce or wages by June 30, 2020.

A participant seeking loan forgiveness shall submit the following to the lender that is servicing the loan an application:

- Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described, including:
  - Payroll tax filings reported to the Internal Revenue Service; and
  - State income, payroll, and unemployment insurance filings;

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- Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;

- A certification from a representative of the eligible recipient authorized to make such certifications that:
  - The documentation presented is true and correct; and
  - The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
- Any other documentation the Administrator determines necessary.

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