The U.S. Treasury Department has recently released its 14th Interim Final Rule (IFR) addressing loan forgiveness for the Paycheck Protection Program (PPP) loans. This new IFR clarified certain issues while leaving others outstanding.

In addition, Congress has proposed changes to the PPP loan process through the Paycheck Protection Flexibility Act. This proposal, if enacted, would significantly alter the PPP loan forgiveness provisions and allow for a larger portion of the PPP loan to be forgiven.

The unfortunate part of these changes is that, for a some of you, this comes at the end of the original 8 week covered period making planning exceedingly difficult! Here are the details:

Paycheck Protection Flexibility Act

The Paycheck Protection Flexibility Act (PPFA) is a bipartisan proposal that would increase the flexibility of the PPP rules surrounding forgiveness. The PPFA was introduced on May 15th in the U.S. House of Representatives and many reports indicate there will be a vote in the House this week. The key provisions of the bill are:

1. *Loan maturity* – PPP loan maturity would be changed from 2 years to at least 5 years, and maximum of 10 years.

2. *Covered period* – The definition of the covered period, for forgiveness, would be changed to begin on the date funds are received and end on the earlier of (a) 24 weeks later or (b) December 31, 2020. This is an extension from the current 8 week guideline. Note that the Senate has indicated that they will look for a 16 week period.

3. *Forgiveness reductions & timing to correct* – Employers have until June 30, 2020, to correct any decrease in full-time equivalents or decreases in wages exceeding 25%. The June 30, 2020, date would be extended to December 31, 2020, for the full-time equivalents test only.

4. *75% payroll requirement* – Currently, loan forgiveness requests must comprise at least 75% Payroll Costs for full forgiveness. The proposed legislation would remove the 75% payroll requirement.

5. *Payroll tax deferral* – A borrower that requests loan forgiveness becomes ineligible for the payroll tax deferral provision of the CARES Act once loan forgiveness is approved by the lender. The proposed legislation would remove this caveat and allow a PPP borrower to utilize the payroll tax deferral regardless of loan forgiveness.

As you'll see, any one of these provisions will significantly alter the amount of PPP loan that will be forgiven. We are hopeful that Congress will pass this legislation soon to allow for additional planning opportunities.

Additional Clarifications in the latest Interim Final Rules (IFR)

Payroll & Non-Payroll Clarifications

Relative to employee payroll, the following are important clarifications:

1. *Costs incurred or paid* – Cost incurred or paid, without duplication of the expense, are included in payroll & non-payroll costs. The IFR follows the forgiveness application in describing "incurred." For payroll costs, incurred should capture the last payroll paid immediately after the 8-week Covered Period ends. For non-payroll costs, incurred should capture an expense otherwise billed the following month but for which the days of service fall within the 8-week Covered Period. *For both payroll and non-payroll costs, remember to include only the days falling within the 8-weeks Covered Period.*

2. *Alternative Payroll Covered Period* – The IFR confirms this election is available for bi-weekly, or more frequent, payroll cycles only. The election applies only to payroll costs and allows a borrower to begin their covered period on the first day of the first payroll cycle that starts within the normal, 8-week covered period.

3. *Payments to furloughed employees, bonuses & hazard pay* – The IFR confirms the definition of payroll costs includes all payments to furloughed employees, bonuses & hazard pay.

4. *Prepayment of interest* – The IFR specifically addresses prepayment of interest on covered mortgage obligations and indicates such payments are not eligible for forgiveness.

Owner Compensation

The 14th IFR confirms owner compensation is limited to the lesser of 8/52 of 2019 compensation or $15,385 with some nuance for each business type:

- C & S Corporation Owners – Owner-employee compensation is inclusive of non-cash compensation related to employer retirement and health care contributions made on their behalf.

- Schedule C (Sole Proprietors or Single Member LLCs) – Consistent with prior guidance, owner compensation replacement is limited to 8/52 of 2019 Schedule C net profit excluding retirement and health insurance contributions.
- Partners in Partnerships – Owner compensation replacement is based upon 2019 net earnings from self-employment reduced by (1) claimed Section 179 expense, (2) unreimbursed partnership expenses, and (3) depletion from oil and gas properties. The adjusted amount is multiplied by 92.35% before determining 8/52 and comparing to $15,385. Like Schedule C, retirement and health insurance contributions are ignored.

Forgiveness Reductions

The forgiveness application provided insight into how the SBA intended to apply the forgiveness reductions but lacked certain specifics. The IFR clarified some areas but not all. Below we address important items to consider:

FAQ Exception for Attempted Rehire – Recall FAQ #40 provided an exception to the reduction in full-time equivalents (FTEs) if a borrower attempted to rehire an individual who rejected such offer. By inclusion of this exception in the IFR, the exception is now considered law. The IFR requires utilizing this exception including a previously unknown requirement: ***the borrower must inform the applicable state unemployment insurance office of such employee's rejected offer of re-employment within 30 days of the employee's rejection of the offer***.

Here is the link to the PA UC's website to make this required report.
https://www.uc.pa.gov/forms/Pages/UC-1921W-Refusal-of-Suitable-Work.aspx

What's Next?

As you can see, the issues with PPP loans and forgiveness are completely fluid at this time. Should the PPFA become law, a lot will change. However, borrowers should be weary of waiting to act before the 8-week covered period expires, lest they risk an opportunity to maximize forgiveness under today's rules.

Of course, if you have any questions, please do not hesitate to call us.