

HERE WE GO AGAIN. ADDITIONAL GUIDANCE FROM THE SBA REGARDING THE PPP PROGRAM CLARIFIES THE CERTIFICATION REQUIREMENT FOR LOANS UNDER TWO MILLION AND CLARIFIES WHAT IS INCLUDED IN PAYROLL

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After the last guidance from the SBA, several questions remained regarding the length to which the SBA would review the certifications made by borrowers obtaining a PPP loan. New guidance states that as long as the loan is under two million dollars, it will not be questioned as meeting the certification requirement that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” See question 46 https://www.sba.gov/sites/default/files/2020-05/Paycheck-Protection-Program-Frequently-Asked-Questions_05%2013%2020.pdf.

Further Guidance provided by the SBA states that the amount of forgiveness results from the 8 week period beginning from the date the lender makes the first disbursement of the PPP loan to the borrower. Q.20. The amount of forgiveness includes payroll costs. Question 16 in the new guidance states that payroll costs are calculated on a gross basis without regard to federal taxes imposed or withheld such as the employee’s share of FICA and income taxes required to be withheld from salary. Payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer’s share of payroll tax. Q 16.

In addition, the new guidance clarifies what can be added to the \$100,000 limit on annual salaries. Under the PPP programs, salary amounts over \$100,000 should not be included in the loan. The new guidance states that this exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:

Employer contributions to defined benefit or defined contribution retirement plans;

Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and

Payment of state and local taxes assessed on compensation of employees. Q.7.

The guidance has many other provisions that may be applicable to your firm. Each firm should review the attached guidance carefully to ensure compliance and documenting the loans to ultimately receive forgiveness.