I’ve applied for a loan under the SBA’s Paycheck Protection Program. Can the loan be forgiven if I reduce the number of employees or reduce wages? (3/31/20)

The federal Coronavirus Aid, Relief, and Economic Stability Act (CARES Act) was signed into law on March 27, 2020. Among the CARES Act’s many provisions, it amends Section 7(a) of the Small Business Act by adding the Paycheck Protection Program. This program can provide eligible small businesses with a loan of up to $10 million for payroll and certain other expenses. Additionally, under this loan program, if the employer maintains his or her workforce, SBA will forgive the portion of the loan proceeds that are used to cover the first eight weeks of payroll and certain other expenses following loan origination.

The amount of loan forgiveness can be reduced, however, through reductions in either the number of employees or reductions related to employee salary and wages. See the following excerpts from Sec. 1106(d) of the CARES Act:

(2) REDUCTION BASED ON REDUCTION IN NUMBER OF EMPLOYEES.—

(A) IN GENERAL.—The amount of loan forgiveness under this section shall be reduced, but not increased, by multiplying the amount described in subsection (b) by the quotient obtained by dividing—

(i) the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by

(ii) (I) at the election of the borrower—

(aa) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019; or

(bb) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or

(II) in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.

(B) CALCULATION OF AVERAGE NUMBER OF EMPLOYEES.—For purposes of subparagraph (A), the average number of full-time equivalent employees shall be determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.

(3) REDUCTION RELATING TO SALARY AND WAGES.—

(A) IN GENERAL.—The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (B) during the covered period that is in excess of 25 percent of the total salary or wages of the
employee during the most recent full quarter during which the employee was employed before the covered period.

(B) EMPLOYEES DESCRIBED.—An employee described in this subparagraph is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than $100,000.

It is important to note, however, that Section 1106(d)(5) of the CARES Act provides that if the small business eliminates these reductions (e.g., rehires) by June 30, 2020, the amount of loan forgiveness is determined without regard to the reduction:

(5) EXEMPTION FOR RE-HIRES.—

(A) IN GENERAL.—In a circumstance described in subparagraph (B), the amount of loan forgiveness under this section shall be determined without regard to a reduction in the number of full-time equivalent employees of an eligible recipient or a reduction in the salary of 1 or more employees of the eligible recipient, as applicable, during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act.

(B) CIRCUMSTANCES.—A circumstance described in this subparagraph is a circumstance—

(i) in which—

(I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the number of full-time equivalent employees of an eligible recipient; and

(II) not later than June 30, 2020, the eligible employer has eliminated the reduction in the number of full-time equivalent employees;

(ii) in which—

(I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the salary or wages of 1 or more employees of the eligible recipient; and

(II) not later than June 30, 2020, the eligible employer has eliminated the reduction in the salary or wages of such employees; or

(iii) in which the events described in clause (i) and (ii) occur.
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