
Hughes Hubbard & Reed

CARES Act Developments and Newly Proposed Fiscal Stimulus Legislation as of August 28, 2020

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August 28, 2020 – The Small Business Administration issued an interim final rule this week clarifying whether certain owner-employee compensation could qualify for loan forgiveness under the Paycheck Protection Program. There were no legislative proposals of note.

Regulatory Developments Relating to the Pandemic

SBA Addresses Owner-Employee Compensation Qualifying for Forgiveness Under PPP

On August 24, the SBA issued an interim final rule (IFR) allowing the payroll compensation of owner-employees to qualify for loan forgiveness for Paycheck Protection Program loans made to C corporations or S corporations if the owner-employee's stake in the borrower is less than five percent. Before the SBA issued the IFR, owner-employee payroll compensation did not qualify for PPP loan forgiveness regardless of the size of the employee-owner's stake. The IFR states that this exception to the owner-employee compensation rule is intended to cover owner-employees who have no meaningful ability to influence decisions over how loan proceeds are allocated. The IFR also clarified that (1) costs attributable to the business operation of a PPP borrower's tenant or sub-tenant or, in the context of home-based businesses, household expenses, are not eligible for forgiveness; and (2) rent and lease payments to a related party are eligible for PPP loan forgiveness if the amount of forgiveness requested for such payments does not exceed the mortgage interest owed on the space being used by the PPP borrower for its business during the PPP covered period, and the lease and mortgage pre-dated February 15, 2020.

- [Interim Final Rule](#)

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