

COVID-19: PPP Loan Forgiveness Interim Final Rules

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COVID-19 RESOURCE CENTER

On Friday, May 22, 2020, the Small Business Administration (SBA) released two Interim Final Rules related to the Paycheck Protection Program Loan (PPP Loans) forgiveness. One focused on borrowers and the other focused on lenders. This article will provide an overview of each rule.

[Paycheck Protection Program – Requirements – Loan Forgiveness](#)

The Interim Final Rule providing much needed guidance focused on loan forgiveness for Borrowers outlined seven (7) key topics.

1. General
2. Loan Forgiveness Process
3. Payroll Costs Eligible for Loan Forgiveness
4. Non-payroll Costs Eligible for Loan Forgiveness
5. Reductions to Loan Forgiveness Amount
6. Documentation Requirements
7. Additional Information

For brevity, we are only highlighting the topics generating the most interest. This Interim Final Rule has provided clarity on how eligible payroll costs for the forgiveness covered period (or alternative payroll covered period) will work. In general, payroll costs paid or incurred during the eight week covered period are eligible for forgiveness. However, these rules allow costs incurred during the 8-week period but not paid by the end of the period to be included in the application for forgiveness, so long as the costs are paid no later than the first regular payroll date thereafter. It is important to note that only the prorated days of the covered period are eligible to be included in the forgiveness application.

We also now know, that “salary, wages, or commission payments to furloughed employees [including] bonuses; or hazard pay” during the covered period, are includable in an application for forgiveness. This is great information for those organizations who want to keep their employees on payroll even if the amount of work performed has been limited.

The rule provided specific guidance and details for Owner-Employees, Schedule C filers and General Partners. The guidance caps the amount of eligible non-cash payroll costs (retirement and health insurance) based on the Borrower’s specific situation. However, there are still questions related to exactly who an “owner-employee” which requires further clarification from the SBA. For how this impacts your specific situation, call to discuss with your primary RubinBrown contact.

For more information, please contact:

Tim Sims, CPA, CGMA – St. Louis
Partner-In-Charge
Tax Services Group
314.290.3434
tim.sims@rubinbrown.com

Steven Harris, CPA, CGMA – St. Louis
Partner-In-Charge
Entrepreneurial Services Group
314.290.3265
steven.harris@rubinbrown.com

Tony Nitti, CPA, MST – Denver
Partner-In-Charge
National Tax
720.709.5646
tony.nitti@rubinbrown.com

Jeff Sparks, CPA, CGMA – St. Louis
Partner
Entrepreneurial Services Group
314.290.3360
jeffrey.sparks@rubinbrown.com

Rhonda Sparlin, CPA – Denver
Partner-In-Charge
State & Local Tax Services Group
303.952.1243
rhonda.sparlin@rubinbrown.com

Jeff Breeden, CPA – Las Vegas
Partner
Tax Services Group
702.579.7019
jeff.breeden@rubinbrown.com

Greg Osborn, CPA, CGMA – Denver
Partner & Resident Manager
Tax Services Group
303.952.1250
greg.osborn@rubinbrown.com

Mary Ramm, CPA – Kansas City
Partner
Tax Services Group
816.859.7906
mary.ramm@rubinbrown.com

John Woodbury, CPA – Chicago

For non-payroll costs (rent, mortgage interest, and utilities), those costs that are paid or incurred during the covered period are eligible for forgiveness. Remember that all non-payroll costs are currently limited to 25% of the eligible payroll costs. The new, and good, news is the billing cycle for these costs will not affect the amount of expenses eligible for forgiveness. Similar to how payroll will work at the end of the covered period, non-payroll costs can be prorated for the portion of the billing cycle that falls within the covered period. In addition, the rule provides some clarity over rent payments and mortgage interest. The payment of rent obligations for personal property, i.e., equipment used in the business, will be included in the forgiveness calculation as long as the rental obligation was in existence before February 15, 2020. In addition, the interest paid on mortgage loan agreements for personal property, i.e., business equipment, will be included. As of now, we believe that this stipulation would exclude traditional line-of-credit agreements from the mortgage loans.

Finally, the Interim Final Rule provided detailed guidance on the forgiveness limitations and calculations for Full Time Equivalent (FTE) Employees and, the salary and wage reduction. It is important to do the calculations on an employee-by-employee basis, as unique situations will “exempt” certain employees from the calculation. For example, employees that resigned voluntarily or an employee that worked fewer hours because of lowered demand **BUT** had the same rate of pay for the hours worked may qualify for the exemption.

One of the more important rules related to the “exempt” employees from the FTE limitation calculation is in Section 5a, regarding employees that rejected a good faith offer to return to work. In addition to the Borrower showing evidence of the offer and rejection, the SBA is requiring the Borrower to **ALSO** show evidence they informed the applicable state unemployment office **within 30 days of the employee’s rejection of the offer**. Given the FTE limitation’s effect on the forgivable amount, this could drastically affect some Borrower’s forgivable amounts.

In general, the guidance confirms there is a lot of effort needed by the Borrower (or their CPA) in order to complete Form 3508 (Forgiveness Application) and the required supporting documentation for the application.

[Paycheck Protection Program – SBA Loan Review Procedures and Related Borrower and Lender Responsibilities](#)

The other rule provides guidance to Lenders (and indirectly to Borrowers) regarding the review of forgiveness applications and determination of forgiveness by the SBA. For Borrowers, the ‘SBA Reviews of Individual PPP Loans’ is the most important section of this rule. Borrowers will want to make sure they consider what the SBA will be looking at as they complete their loan forgiveness package. These include the following areas:

- I. Borrower Eligibility
- II. Loan Amounts and Use of Proceeds
- III. Loan Forgiveness Amounts

The guidance states the SBA is not limited to reviewing only loans over \$2

Partner
Tax Services Group
847.972.5848
john.woodbury@rubinbrown.com



million, rather they “may review any PPP loan, as the Administrator deems appropriate.” Additionally, the SBA made clear that the review of the Borrower eligibility, loan amount, or loan forgiveness amount could be reviewed as soon as submission of the supporting documentation by the lender or at any time within six years after the date of loan forgiveness or repayment in full.

In addition to the SBA’s focal points, the SBA has directed the Lenders to specifically confirm the following:

- I. Confirm receipt of the Borrower certifications contained in the Loan Forgiveness Application Form.
- II. Confirm receipt of the documentation Borrowers must submit to aid in verifying payroll and non-payroll costs, as specified in the instructions to the Loan Forgiveness Application Form.
- III. Confirm the Borrower’s calculations on the Borrower’s Loan Forgiveness Application, including the dollar amount of the:
 - a. Cash Compensation, Non-Cash Compensation, and Compensation to Owners claimed on Lines 1, 4, 6, 7, 8, and 9 on PPP Schedule A, and
 - b. Business Mortgage Interest Payments, Business Rent or Lease Payments, and Business Utility Payments claimed on Lines 2, 3, and 4 on the PPP Loan Forgiveness Calculation Form, by reviewing the documentation submitted with the Loan Forgiveness Application.
- IV. Confirm that the Borrower made the calculation on Line 10 of the Loan Forgiveness Calculation Form correctly, by dividing the Borrower’s Eligible Payroll Costs claimed on Line 1 by 0.75.

As more details around this program become clear, the more important it appears to have an independent review of these criteria before final submission of the forgiveness application. The requirements are complicated and misunderstanding any one of them could result in lower loan forgiveness or delays in the forgiveness process. Remember, the lender must issue a decision to the SBA on loan forgiveness not later than 60 days after receipt of a complete loan forgiveness application.

In the instance that a Borrower is denied forgiveness, they have the ability to petition the SBA directly to review their application for forgiveness. Borrowers should know that if you request this review, it would be performed with the same level of scrutiny as those forgiveness applications selected by the SBA to review. Meaning, work with your bank and your CPA to get it right the first time!

If you have any questions, contact your primary RubinBrown contact.

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