



SBA releases Paycheck Protection Program (PPP) loan forgiveness application and interim final rule

May 27, 2020

On May 15, 2020, the Small Business Administration (SBA) and Department of the Treasury released the much anticipated Paycheck Protection Program (PPP) loan forgiveness [application](#). Shortly thereafter, on May 22, 2020, the [interim final rule](#) regarding the process for applying for and obtaining loan forgiveness was also released.

As noted in a prior [alert](#), there are many benefits of PPP loans, which include, subject to certain limitations, loan proceeds that may be forgiven up to an amount equal to the total spent on the following items during the first eight weeks of the loan term: (i) payroll costs, (ii) interest on mortgages, (iii) rent and (iv) utilities. Additionally, principal and interest payments are deferred for 12 months after funding. As a result, there has been significant demand for these loans among small businesses.

There has also been much consternation and anxiety among borrowers and lenders regarding the loan forgiveness process, and the application and rule provide some much-needed clarity.

Below are some highlights regarding new information provided in the loan forgiveness application and interim final rule regarding loan forgiveness:

- Payroll costs that count toward the amount forgiven must be paid and incurred in the 56-day period (eight weeks) commencing on the date the loan was disbursed to the borrower. A borrower may elect to use an alternative 56-day period only for payroll costs that commence on the first day of the borrower's pay cycle following disbursement of the loan. Payroll costs are considered paid on the day paychecks are disbursed and incurred on the day the wages are

earned.

- For owners/self-employed individuals, the compensation that counts towards loan forgiveness is capped at an amount no greater than 8/52 of such person's 2019 compensation and, in any case, \$15,385.
- The full-time employee reduction rule, which reduces the amount of loan forgiveness if a borrower reduces its number of full-time employees during the covered period, will not apply in circumstances in which (1) the borrower made a good-faith written offer to rehire an employee during the 56-day covered period and such offer was rejected by the employee or (2) employees during the 56-day covered period were fired for cause, voluntarily resigned or voluntarily requested a reduction in hours.
- There has been no change to the requirement that a borrower utilizes at least 75 percent of the loan proceeds for payroll costs, and the application contains a certification regarding the same.
- The application and rule also provide clarity regarding the impact of any reduction in compensation of more than 25 percent for any employee (comparing the first quarter of 2020 to the covered period), which may result in a reduction of the loan forgiveness amount.
- Lenders have 60 days from the date a complete application is received to issue a decision to the SBA regarding the forgiveness amount, and the SBA then has 90 days after receipt of the lender's decision to review the application for forgiveness, make its determination and fund the amount forgiven (plus interest) to the lender.
- The borrower must retain all documentation submitted in connection with its application for loan forgiveness for at least 6 years.

The application and rule do not provide additional detail regarding the documentation required to support the loan forgiveness application. Instead, it refers borrowers to Section 1106(e) of the CARES Act, which provides that a borrower must submit the following documentation with its application for forgiveness (and without such documentation, forgiveness will not be granted):

New and updated guidance has been frequently released by the Treasury and SBA, sometimes multiple times each week, since the program commenced in early April. The [interim final rules and other guidance](#) include a [Frequently Asked Questions](#) document that has been updated multiple times since it was initially issued in early April. All of this activity bears continual monitoring by businesses that have received or are still considering PPP loan assistance.

1. documentation verifying the number of full-time equivalent employees on payroll and pay rates, including:
 - a. payroll tax filings reported to the Internal Revenue Service; and
 - b. state income, payroll and unemployment insurance filings;
2. documentation, including canceled checks, payment receipts, transcripts of accounts or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations and covered utility payments;
3. a certification from a representative of the eligible recipient authorized to make such certifications that:
 - a. the documentation presented is true and correct; and
 - b. the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation or make covered utility payments; and
4. any other documentation the SBA determines necessary.

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