

SBA Issues New FAQs Regarding PPP Loan Forgiveness

Article

Lowndes

08.10.2020

Related Attorneys

Nicole C. Leath

Despite billions of dollars in funds remaining and available to the Paycheck Protection Program (“PPP”) to provide small business loans, Congressional discussions to extend the program stalled last week, and the PPP loan program expired on August 8. While there were proposals to allow a second round of PPP funds to certain businesses and universal forgiveness for loans under a certain threshold amount, no such proposals have taken root, and the SBA will begin accepting forgiveness applications today (August 10).

While the PPP’s future is unclear, the SBA, in consultation with the Department of Treasury, provided additional guidance on loan forgiveness on August 4 in the form of 23 new frequently asked questions (“FAQs”), which can be viewed in full here. The new FAQs cover general loan forgiveness, forgiveness of payroll costs, forgiveness of nonpayroll costs and forgiveness reduction calculations. The new FAQs provide useful examples and explanations, but stop short of promulgating any major shifts in policy, as we have seen in some prior FAQs.

General Loan Forgiveness FAQs

In the first section—[General Loan Forgiveness FAQs](#)—Question No. 1 indicates that sole proprietors, independent contractors and self-employed individuals with no employees automatically qualify to use the 3508EZ forgiveness form.

Question No. 3 confirms that a borrower does not need to make payments on its loan prior to the SBA remitting the forgiveness amount, so long as the borrower submitted its loan application within 10 months of the completion of the Covered Period.

Question: If a borrower submits a timely loan forgiveness application, does the borrower have to make any payments on its loan prior to SBA remitting the forgiveness amount, if any?

Answer: As long as a borrower submits its loan forgiveness application within 10 months of the completion of the Covered Period

(as defined below), the borrower is not required to make any payments until the forgiveness amount is remitted to the lender by SBA. If the loan is fully forgiven, the borrower is not responsible for any payments. *If only a portion of the loan is forgiven, or if the forgiveness application is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. Interest accrues during the time between the disbursement of the loan and SBA remittance of the forgiveness amount.* The borrower is responsible for paying the accrued interest on any amount of the loan that is not forgiven. The lender is responsible for notifying the borrower of remittance by SBA of the loan forgiveness amount (or that SBA determined that no amount of the loan is eligible for forgiveness) and the date on which the borrower's first payment is due, if applicable.

Loan Forgiveness Payroll Costs

The second section—[Loan Forgiveness Payroll Costs FAQs](#)—confirmed that payroll costs incurred during the Covered Period, but paid after the Covered Period are forgivable. It also confirmed that payroll costs incurred before the Covered Period but paid during the Covered Period are forgivable (see the full FAQs for examples demonstrating these concepts).

Next, the SBA confirmed that the gross amount of compensation (the amount before deductions for taxes and benefits) should be used to determine an employee's cash compensation, and that bonus and incentive pay are forgivable payroll costs so long as an individual employee's compensation does not exceed \$100,000 on an annualized basis.

The SBA then provided further explanation on forgiveness of health care and retirement benefits.

Question: What expenses for group health care benefits will be considered payroll costs that are eligible for loan forgiveness?

Answer: Employer expenses for employee group health care benefits that are paid or incurred by the borrower during the Covered Period or the Alternative Payroll Covered Period are payroll costs eligible for loan forgiveness. However, payroll costs do not include expenses for group health care benefits paid by employees (or beneficiaries of the plan) either pre-tax or after tax, such as the employee share of their health care premium. Forgiveness is not provided for expenses for group health benefits accelerated from periods outside the Covered Period or Alternative Payroll Covered Period. If a borrower has an insured group health plan, insurance premiums paid or incurred during the Covered Period or Alternative Payroll Covered Period qualify as "payroll costs," as long as the premiums are paid during the applicable period or by the next premium due date after the end of the applicable period. As noted, only the portion of the premiums paid by the borrower for coverage during the applicable Covered Period or Alternative Payroll Covered Period is included, not any portion paid by employees or beneficiaries or any portion paid for coverage for periods outside the applicable period. Loan Forgiveness Payroll Costs FAQ 8 outlines the rules that apply to owner health insurance.

Question: What contributions for retirement benefits will be considered payroll costs that are eligible for loan forgiveness?

Answer: Generally, employer contributions for employee retirement benefits that are paid or incurred by the borrower during the Covered Period or Alternative Payroll Covered Period qualify as "payroll costs" eligible for loan forgiveness. The employer contributions for retirement benefits included in the loan forgiveness amount as payroll costs cannot include any retirement contributions deducted from employees' pay or otherwise paid by employees. Forgiveness is not provided for employer contributions for retirement benefits accelerated from periods outside the Covered Period or Alternative Covered Period.

Loan Forgiveness Payroll Costs FAQ 8 outlines the treatment of retirement benefits for owners, which are different from this general approach.

This section also addressed how to calculate the amount of owner compensation that is eligible for loan forgiveness and provided examples of this calculation for C Corps, S Corps, self-employed Schedule C or Schedule F filers, general partners and LLC members (see pages 4-6 of the FAQs for all examples).

Question: How is the amount of owner compensation that is eligible for loan forgiveness determined?

Answer: The amount of compensation of owners who work at their business that is eligible for forgiveness depends on the business type and whether the borrower is using an eight-week or 24-week Covered Period. In addition to the specific caps described below, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at \$20,833 per individual in total across all businesses in which he or she has an ownership stake. For borrowers that received a PPP loan before June 5, 2020 and elect to use an eight-week Covered Period, this cap is \$15,385. If their total compensation across businesses that receive a PPP loan exceeds the cap, owners can choose how to allocate the capped amount across different businesses...

Loan Forgiveness Nonpayroll Costs FAQs

The SBA went on to address [Loan Forgiveness Nonpayroll Costs FAQs](#). Question No. 3 confirmed that the "Alternative Payroll Covered Period" may be used for payroll costs only, and not for nonpayroll costs.

Question: If a borrower elects to use the Alternative Payroll Covered Period for payroll costs, does the Alternative Payroll Covered Period apply to nonpayroll costs?

Answer: No. The Alternative Payroll Covered Period applies only to payroll costs, not to nonpayroll costs. The Covered Period always starts on the date the lender makes a disbursement of the PPP loan. Nonpayroll costs must be paid or incurred during the Covered Period to be eligible for loan forgiveness. For payroll costs only, the borrower may elect to use the Alternative Payroll Covered Period to align with its biweekly or more frequent payroll schedule.

Question No. 6 cleared up what is meant by "transportation" costs, which is a forgivable non-payroll expense under the utility category. The SBA indicated that transportation means, "[a] service for the distribution of transportation refers to transportation utility fees assessed by state and local governments".

Loan Forgiveness Reductions FAQs

The final Section—[Loan Forgiveness Reductions FAQs](#)—reiterated a few policies we have already seen. For instance, it confirmed that employers will not be penalized for a reduction in FTEs if the borrower offered to rehire, in good faith, such employees, but the employees declined to return. The answer also indicated that employers should notify the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection. It further provided that the documents that borrowers should maintain to show compliance with this exemption include "the written offer to rehire an individual, a written record of the offer's rejection, and a written record of efforts to hire a similarly qualified individual".

Question No. 4 of the final section explains how to calculate the reduction in forgiveness due to salary/wage reduction of employees and provides three examples as follows:

Question: How do borrowers calculate the reduction in their loan forgiveness amount arising from reductions in employee salary or hourly wage?

Answer: Certain pay reductions during the Covered Period or the Alternative Payroll Covered Period may reduce the amount of loan forgiveness a borrower will receive. If the salary or hourly wage of a covered employee⁶ is reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period, the portion in excess of 25% reduces the eligible forgiveness amount unless the borrower satisfies the Salary/Hourly Wage Reduction Safe Harbor (as described in the Loan Forgiveness Application (SBA Form 3508 or lender equivalent)). The examples below assume that each employee is a “covered employee.”

Example 1: A borrower received its PPP loan before June 5, 2020 and elected to use an eight-week Covered Period. Its full-time salaried employee’s pay was reduced during the Covered Period from \$52,000 per year to \$36,400 per year on April 23, 2020 and not restored by December 31, 2020. The employee continued to work on a full-time basis with a full-time equivalency (FTE) of 1.0. The borrower should refer to the “Salary/Hourly Wage Reduction” section under the “Instructions for PPP Schedule A Worksheet” in the PPP Loan Forgiveness Application Instructions. In Step 1, the borrower enters the figures in 1.a, 1.b, and 1.c, and because annual salary was reduced by more than 25%, the borrower proceeds to Step 2. Under Step 2, because the salary reduction was not remedied by December 31, 2020, the Salary/Hourly Wage Reduction Safe Harbor is not met, and the borrower is required to proceed to Step 3. Under Step 3.a., \$39,000 (75% of \$52,000) is the minimum salary that must be maintained to avoid a penalty. Salary was reduced to \$36,400, and the excess reduction of \$2,600 is entered in Step 3.b. Because this employee is salaried, in Step 3.e., the borrower would multiply the excess reduction of \$2,600 by 8 (if it had instead selected a 24-week Covered Period, it would multiply by 24) and divide by 52 to arrive at a loan forgiveness reduction amount of \$400. The borrower would enter on the PPP Schedule A Worksheet, Table 1, \$400 as the salary/hourly wage reduction in the column above box 3 for that employee.

Example 2: A borrower received its PPP loan before June 5, 2020 and elected to use a 24-week Covered Period. An hourly employee’s hourly wage was reduced from \$20 per hour to \$15 per hour during the Covered Period. The employee worked 10 hours per week between January 1, 2020 and March 31, 2020. The borrower should refer to the “Salary/Hourly Wage Reduction” section under the “Instructions for PPP Schedule A Worksheet” in the PPP Loan Forgiveness Application Instructions. Because the employee’s hourly wage was reduced by exactly 25% (from \$20 per hour to \$15 per hour), the wage reduction does not reduce the eligible forgiveness amount. The amount on line 1.c would be 0.75 or more, so the borrower would enter \$0 in the Salary/Hourly Wage Reduction column for that employee on the PPP Schedule A Worksheet, Table 1. If the same employee’s hourly wage had been reduced to \$14 per hour, the reduction would be more than 25%, and the borrower would proceed to Step 2. If that reduction were not remedied as of December 31, 2020, the borrower would proceed to Step 3. This reduction in hourly wage in excess of 25% is \$1 per hour. In Step 3, the borrower would multiply \$1 per hour by 10 hours per week to determine the weekly salary reduction. The borrower would then multiply the weekly salary reduction by 24 (because the borrower is using a 24-week Covered Period). The borrower would enter \$240 in the Salary/Hourly Wage Reduction column for that employee on the PPP Schedule A Worksheet, Table 1. If the borrower applies for forgiveness before the end of the 24-week Covered Period, it must account for the salary reduction (the excess reduction over 25%, or \$240) for the full 24-week Covered Period.

Example 3: An employee earned a wage of \$20 per hour between January 1, 2020 and March 31, 2020 and worked 40 hours per week. During the Covered Period, the employee’s wage was not changed, but his or her hours were reduced to 25 hours per week. In this case, the salary/hourly wage reduction for that employee is zero, because the hourly wage was unchanged. As a result, the borrower would enter \$0 in the Salary/Hourly Wage Reduction column for that employee on the PPP Schedule A Worksheet, Table 1. The employee’s reduction in hours would be taken into account in the borrower’s calculation of

its FTE during the Covered Period, which is calculated separately and may result in a reduction of the borrower's loan forgiveness amount.

Finally, the SBA confirmed that, for purposes of calculating reductions in the forgiveness amount due to salary/wage reductions in excess of 25%, the borrower should only take into account decreases in salaries or wages, and no other forms of compensation.

If you have any questions on PPP loans, please do not hesitate to reach out to our team. We remain committed to helping our clients through these difficult times.