

## New Guidance on PPP Loan Forgiveness

On May 22, 2020, the SBA issued new interim final rules related to Paycheck Protection Program loan forgiveness, following its May 15 publication of its Loan Forgiveness Application (the "Application") (available [here](#)). The next day, May 23, the SBA issued additional interim final rules that clarify some issues in the Application.

Based on the Application and new rules, PPP loan borrowers should note the following key terms:

1. The "Cover Period" for payroll costs is either – at the borrower's election – the eight weeks following receipt of the PPP loan proceeds, or the eight week period that starts on the first day of the borrower's first payroll period following disbursement of the loan proceeds.
2. Full time equivalent ("FTE") employees are calculated based on a 40 hour work week. Employees who work less than 40 hours per week can be counted as half of an FTE (regardless of how many hours they worked) or as an actual percentage, based on hours.
3. Pre-payment of mortgage principal and/or interest, rent or utilities are not forgivable.
4. Qualified payroll costs incurred during the Cover Period, or paid during the Cover Period, are forgivable. Payroll costs are incurred on the day the employee's salary or wages are earned.
5. Bonuses and special hazard pay paid during the Cover Period are eligible payroll costs.
6. Salaries and wages paid during the Cover Period to furloughed employees or employees who do no work qualify for forgivable payroll costs.
7. Similar to payroll costs, qualified non-payroll costs incurred during to the Cover Period, or paid during the Cover Period, are forgivable.
8. When borrowers calculate the number of employees they have laid off, they are not required to include employees who (i) reject a written offer to return to work, (ii) leave voluntarily, or (iii) were terminated for cause. If the employee rejects a written offer to return the employer must notify the state unemployment insurance office within 30 days of such rejection.
9. Qualified non-payroll expenses that may be forgiven include rent paid under a lease, as well as payments for the lease of equipment, such as copiers, telephones and computer systems.
10. The Application is submitted to the

Note that no more than 25% of the forgiven amount may be used to pay non-payroll costs.

borrower's lender. The lender has 60 days to determine whether all or some of the loan is eligible for forgiveness, and submits its finding to the SBA. The SBA then has 90 days to make a final determination. The SBA's decision is appealable, yet the procedures for an appeal have not been issued. Upon approval, the SBA will pay the lender the forgiven principal amount. The SBA's guidance implies that it will pay the lender interest on the forgiven amount, yet additional guidance will be forthcoming.

11. If PPP loan proceeds are "knowingly used for unauthorized purposes," the SBA will seek the recovery of the loan, and may file civil and/or criminal charges against the borrower and the responsible officers. Criminal charges can include making a false statement to the U.S. government.
12. All PPP loans in excess of \$2 million will be reviewed by the SBA, including the borrower's certification that the loan was necessary. For all PPP loans less than \$2 million, the borrower is automatically deemed to have made the required certification concerning the necessity of the loan request in good faith.
13. When a borrower submits its Application it must include copies of the following documents:
  - ◆ Bank statements or payroll records verifying payroll costs;

- ◆ Payroll tax forms;
- ◆ Receipts, checks or account statements showing employer contributions to benefit plans;
- ◆ Documents showing the average number of FTE employees on the payroll;
- ◆ Account statements and payment of mortgage principal and interest;
- ◆ Leases and lease payments; and
- ◆ Utility bills and payments

14. All of the borrower's records and documents related to the PPP loan application, use of the loan proceeds, employment of FTEs, and Application for Forgiveness must be maintained for six years after the PPP loan is forgiven and/or repaid.

More help may be on the way. Last week the United States House of Representatives approved additional stimulus legislation. (The Senate is reviewing the proposed legislation.) Under the House's bill (i) the PPP loan forgiveness period is increased from eight to 24 weeks, (ii) employers have until December 31, 2020 to restore reductions in pay or rehire FTEs, (iii) the maturity date of all loans are extended to five years, and (iv) the employer's share of payroll taxes will be paid in equal installment on December 31, 2021 and December 31, 2022. It is not clear if some or all of these provisions will become law, but there are ongoing efforts to ease the burden on PPP loan borrowers. Stay tuned.

*This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of COVID-19 on you or your business, please contact Joe Laferrera, Aaron Kriss, or Sean Gilligan at (617) 350-6800, or email them at [joe.laferrera@gesmer.com](mailto:joe.laferrera@gesmer.com), [aaron.kriss@gesmer.com](mailto:aaron.kriss@gesmer.com), or [sean.gilligan@gesmer.com](mailto:sean.gilligan@gesmer.com).*



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