

# Additional Guidance Issued on PPP Loan Forgiveness, Loan Review Procedures

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The Small Business Administration (SBA) recently released two interim final rules to accompany the new Paycheck Protection Program (PPP) [Loan Forgiveness Application](#). The rules provide guidance on [loan forgiveness](#) and [SBA loan review procedures](#). Below is a summary of some key provisions of these rules, many of which provide greater clarity for businesses to understand and calculate the portion of their loan that may be forgivable.

## Loan Forgiveness

- **Timing of Lender and SBA Action on Application.** The rule does not provide a time frame within which a business must submit the loan forgiveness application. The rule does clarify that a lender has 60 days following the date of submission of an application to determine what, if any, portion of the loan is eligible for forgiveness. The lender must then submit its determination to SBA, which has 90 days to review the loan and remit the eligible forgiveness value to the lender.
- **Forgiveness of Costs Incurred as well as Costs Paid.** For purposes of determining forgiveness, the CARES Act sets an eight-week period (covered period) during which loan proceeds spent on certain uses may be forgivable. The rules clarify that costs incurred, but not necessarily paid, during the covered period may be eligible for forgiveness. Costs incurred may be forgiven as long as: payroll costs are paid on the next regularly scheduled pay date, and non-payroll costs are paid by the next billing date.
- **Payments to Furloughed Employees, Bonuses, and Hazard Pay may be Forgivable.** The rule broadly interprets the term payroll costs to include payments of salary, wages, or commissions to furloughed employees, bonuses, and hazard pay, subject to the limitation that cash compensation to one individual does not exceed \$100,000 on an annualized basis.

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- **Caps on Amount of Forgiveness Available to Owner-Employees and Self-Employed Individuals' Own Payroll Compensation.** The rule limits the forgiveness of owner-employees and self-employed individuals' payroll compensation to the lesser of 8/52 of 2019 compensation (roughly 15.38% of 2019 compensation) or \$15,385 per individual. Further, for purposes of applying the cap, the individual's 2019 compensation includes the employee's cash compensation and employer retirement and health care contributions made on their behalf.
  - **Advance Payments of Interest on Mortgage Obligations not Eligible for Forgiveness.** The rule clarifies that advance interest payments on a covered mortgage obligation are not eligible for forgiveness because they are specifically excluded as "prepayments" in the CARES Act. The rule also reiterates that the principal on mortgage obligations is not eligible for forgiveness under any circumstances.
  - **Calculating FTE Reductions.** The rule defines a full-time equivalent employee (FTE) as an individual who works 40 hours a week or more during the covered period – these employees are limited to an FTE quotient of 1.0. For part-time employees, businesses may either calculate the average number of hours paid per week divided by 40, or use an FTE equivalency of .5 for each employee – the calculation method chosen must be applied to all part-time employees.
  - **Calculating Payroll Reductions.** The rule restates the provisions of the CARES Act that require a business's loan forgiveness to be reduced if the business suffered a reduction in salary and wages greater than 25%. The rule further clarifies that salary or hourly wage reductions will only be taken into account if they are not attributable to an FTE reduction.
  - **Forgiveness Reduction Safe Harbor.** The rule reaffirms the provisions of the CARES Act that provide businesses with a safe harbor from loan forgiveness reduction – a business has until June 30, 2020, to restore any FTE or payroll reductions without penalty. The rule also clarifies that an employee fired for cause or an employee who voluntarily resigns or voluntarily requests a schedule reduction will not be counted as an FTE reduction.
  - **Offers to Rehire Satisfy Exemption from Reductions.** The rule clarifies that a business is exempt from a reduction in the amount of its loan forgiveness if the business **offers** to rehire an employee or restore employee hours, even if the employee has not accepted. Importantly, the business must notify the state unemployment office of the employee's rejected offer of employment within 30 days.

## SBA Loan Review Procedures

- **SBA Retains Right to Review Any PPP Loan or Forgiveness Application.** The rules clarify that SBA may review any PPP loan or forgiveness application. The rule also notes that a borrower is required to retain PPP documentation in its files for six years after the date the loan is forgiven or repaid in full, and permit SBA to review the documents.
- **Loan Recipients Deemed Ineligible for Receipt are Not Eligible for Forgiveness.** If SBA determines that a business that received a PPP loan was, in fact, ineligible to receive the loan, the SBA will notify the lender that the business is not eligible for loan forgiveness, and may seek repayment of the loan.

- **Lenders May Rely on Recognized Third-Party Payroll Data in Reviewing Forgiveness Calculation.** The rule reiterates that borrowers are ultimately responsible for calculation of the forgiveness amount, and that lenders must perform a good-faith review of the calculation. The rule clarifies that a good-faith review would include the review of recognized third-party payroll data prepared by a payroll expert.

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National Law Review, Volume X, Number 150

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