



SBA Issues New Rule on the Paycheck Protection Program

On Friday, May 22, 2020, the Small Business Administration (SBA) released two new interim final rules on the Paycheck Protection Program (PPP) clarifying some aspects of the program including general eligibility qualifications and payback provisions. One rule addresses the requirements for loan forgiveness and the other outlines PPP loan review procedures and related borrower and lender responsibilities. With the first funds disbursed under the PPP on April 3, the first 56-day period of payroll protection is expected to end this week for the first batch of loan recipients. Highlights of the two new rules include:

- **A better definition of payroll costs**
 - The SBA reiterates that “payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on the compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation.”
- **The establishment of caps on the amount of loan forgiveness available for owner-employees and self-employed individuals**
 - The amount requested can be no more than the lesser of 8/52 of 2019 compensation (approximately 15.38 percent) or \$15,385 per individual in total across all businesses.
 - Owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf.
 - Schedule C filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit and additional forgiveness is provided for retirement and health insurance contributions.
 - General partners are capped by the amount of their 2019 net earnings from self-employment.
- **Clarification on when nonpayroll costs must be incurred or paid to qualify for loan forgiveness.**
 - Specifically, the interim final rules state that a nonpayroll cost is eligible for forgiveness if it was:
 - paid during the covered period; or
 - incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.

- **A more detailed explanation of forgivable nonpayroll costs**
 - Eligible nonpayroll costs cannot exceed 25 percent of the loan forgiveness amount
 - Forgivable nonpayroll costs include:
 - interest payments on any business mortgage obligation on real or personal property that was incurred before February 15, 2020 (but not any prepayment or payment of principal);
 - payments on business rent obligations on real or personal property under a lease agreement in force before February 15, 2020; and
 - business utility payments for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

- **An alternative method for determining when the eight-week period starts for businesses with differing pay cycles**
 - Previously, borrowers were only permitted to use the date in which a lender disbursed PPP loan funds the first day of the eight-week period. For example, under previous SBA guidance, if a borrower received PPP loan funds on June 1, their eight weeks would end on July 26. However, if the borrower pays their employees biweekly and the next scheduled payday is June 7, the SBA's latest rule allows borrowers to elect an alternative payroll covered period (for payroll costs only) that starts on June 7 and ends 55 days later (for a total of 56 days) on August 1.

- **Clarification that the SBA may review any PPP loan, regardless of size, to determine if the borrower is eligible for the loan funding under the CARES Act**
 - Previous statements from the SBA and Treasury Department indicated that PPP loans greater than \$2 million would be reviewed by the SBA. The SBA may review whether a borrower calculated the loan amount correctly and used the funds for eligible costs.
 - PPP loan recipients must retain their documentation in files for six years after the date the loan is forgiven or paid in full and permit authorized representatives of the SBA access to these files upon request.

- **A new requirement for sets a timeline for lenders to decide on a borrower's loan forgiveness application**
 - PPP lenders must decide on a borrower's loan forgiveness application within 60 days of receipt of the completed application. The SBA then has up to 90 days to review the loan forgiveness application.