

# SBA Issues Two Additional PPP Final Interim Rules

The Small Business Administration (SBA) recently released two additional final interim rules to provide further guidance for Paycheck Protection Program (PPP) loan borrowers and lenders. Specifically, the two rules provide guidance for loan review procedures, loan forgiveness, and borrower and lender responsibilities.

This article provides a general overview of the two final interim rules. For more information about your organization's loan, please contact your lender.

## FIRST INTERIM FINAL RULE: LOAN FORGIVENESS REQUIREMENTS

The [first interim final rule](#) was issued one week after the SBA and Department of Treasury released the [PPP Loan Forgiveness Application](#) (Application) and instructions for small businesses to use when applying for PPP loan forgiveness with their lender. The 26-page document addresses PPP loan forgiveness requirements.

Specifically, the first interim final rule covers the following loan forgiveness requirements:

- **Deadline for submitting the Application and receiving a forgiveness decision**—Although the rule does not provide guidance on whether a PPP borrower is subject to an Application submission deadline, it does explain deadlines for lenders to issue a decision on forgiveness. If a PPP loan is not reviewed by the SBA before a lender makes a decision on forgiveness, lenders have 60 days from the receipt of a completed Application to issue a decision. Within 90 days thereafter, the SBA will review the loan and the appropriate forgiveness amount will be remitted to the lender, plus any applicable accrued interest.
- **Forgiveness eligibility of nonpayroll costs**—The rule confirms prior guidance issued that nonpayroll costs are considered to be eligible for forgiveness provided that the costs are paid during the covered period or incurred during the covered period and paid before or on the next billing date. However, the final rule clarified that mortgage interest prepayments and payments of principal are not eligible for forgiveness.
- **Clarification of incurred and paid costs vs. incurred or paid costs**—The rule states that “in general, payroll costs paid or incurred during the eight consecutive week (56 days) covered period are eligible for forgiveness.” The eight-week period typically begins when the loan is disbursed, but borrowers may use an alternative eight-week period to calculate payroll costs. For purposes of this alternative payroll covered period, the eight-week period should begin on the first day of the first pay period following PPP loan disbursement.
- **Definition of a full-time equivalent (FTE) employee**—The rule defines an FTE employee as one that works at least 40 hours per week. To calculate FTEs under the PPP, employers can assign an FTE value to each employee, which can be calculated by dividing the average number of hours an employee is paid per week by 40. The



calculated amount can be rounded to the nearest tenth but cannot exceed 1.0.

- **Compensation and payment clarifications**—The rule provides guidance related to caps on compensation for owner-employees and self-employed individuals, as well as whether bonus and hazard pay and payments to furloughed employees are eligible for forgiveness. The guidance issued in the rule is as follows:
  - **Compensation caps**—The rule explains that owner-employees are limited to their 2019 employee cash compensation, retirement and health care contributions. Self-employed individuals who file Schedule C are limited to owner compensation replacement income from 2019, and general partners are limited to their 2019 self-employment earnings, minus section 179 deductions, depletion from oil and gas properties and partnership expenses that are not reimbursed, multiplied by 0.9235. In addition, retirement and health care contributions for self-employed individuals and general partners are not eligible for forgiveness.
  - **Payment clarifications**—The rule explains that, provided that cash compensation does not exceed \$100,000 on an annualized basis, payroll payments to furloughed employees, as well as bonuses and hazard pay are considered eligible payroll costs for forgiveness.
- **Waived reductions in loan forgiveness for offering to rehire employees**—The rule confirms prior guidance that states reductions in loan forgiveness may be waived if an employee rejects the borrower's good-faith written rehire offer or restoration of store hours for the employee. The rule states that borrowers must inform their state's unemployment office of the rejected offer of employment within 30 days of the offer rejection.

In addition to the above guidance, the first interim final rule explains that salary and hourly wage reductions in loan forgiveness will only be taken into account if the wage reductions are not attributable to an FTE reduction. For more information about the first final interim rule, click [here](#) to read the full text.

## **SECOND INTERIM FINAL RULE: LOAN REVIEW PROCEDURES AND RESPONSIBILITIES**

The [second interim final rule](#) discusses loan review procedures and related borrower and lender responsibilities.

Specifically, the 19-page document provides the following guidance:

- **Loan review procedures**—The rule explains the different types of Application loan reviews that may take place, which include:
  - **SBA review of individual loans**—In some cases, the SBA may review a PPP loan if deemed appropriate. If the SBA reviews an individual PPP loan, the lender must be notified in writing and the borrower must be notified within five business days. During these five days, the lender must transmit the borrower's initial Application and supporting documentation, as well as the borrower's Application to the SBA. The lender must also request the borrower submit the Application's Schedule A Worksheet and submit this worksheet to the SBA within five days of its receipt, and submit a signed and certified transcript of the borrower's account and a copy of the PPP note.

Additionally, the SBA's Administrator is authorized to review the following items:

- Borrower eligibility
- Amount and use of loan funds

- Borrower's entitlement to forgiveness

The rule states that the SBA may review any loan of any size, and that if a borrower is identified as ineligible for a PPP loan in general or to receive forgiveness, the SBA may require the lender to obtain additional information from the borrower. In some cases, the SBA may request additional information from the borrower directly. Any additional information requested will be reviewed before the SBA makes a decision on forgiveness. In addition, the rule states that the SBA intends to issue a subsequent interim final rule to establish appeal procedures should a borrower disagree with the SBA's decision.

- **Lender review of PPP loan**—After a borrower submits the Application to the lender, the lender is required to confirm four things:
  - Receipt of the borrower's certifications within the Application
  - Receipt of documentation for aid in verifying both payroll and nonpayroll costs
  - Borrower's Application calculations through the review of provided documentation
  - Nonpayroll costs are not in excess of 25% of the total loan forgiveness request

While the rule states that the Application calculation accuracy is the responsibility of the borrower, lenders must perform a good-faith review within a reasonable amount of time. Lenders do not have to obtain independent verification of the reported information from the borrower. The rule also confirms that lenders must issue a decision to the SBA on forgiveness within 60 days of receiving the Application. Lenders may issue the following decisions:

- Approving the loan forgiveness amount, whether in whole or in part
  - Denying the forgiveness amount
    - In this case, lenders must also notify borrowers of this decision
  - Denying the forgiveness amount without prejudice due to a pending SBA review
    - This action should only be made if directed by the SBA
- **Borrower actions for denied forgiveness**—If a borrower's Application has been denied, the rule explains that the borrower may request SBA review of the lender's decision within 30 days of receiving the denial notice.

For more information about the second final interim rule, click [here](#) to read the full text.

### NEXT STEPS

For further assistance with your PPP loan or forgiveness, contact your lender. For more information on how your company can respond to the COVID-19 pandemic, contact Cloud, Minturn & Associates, LLC.