

Gavel to Gavel: PPP loan forgiveness

By: James M. Scears Guest Columnist June 3, 2020



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The Paycheck Protection Program, part of the Small Business Administration's 7(a) loan program, has been a moving target since it was established under the CARES Act, which became law on March 27.

Recently, the SBA and Treasury Department released interim final rules on the forgiveness aspect of PPP loans, along with an application for forgiveness and instructions to be used by borrowers. A few important points contained in the latest guidance, along with a suggestion for how borrowers should proceed in this ever-moving landscape include:

- Amounts paid or incurred during the eight-week covered period are generally forgivable. This standard means that more than eight weeks of qualifying expenses should be eligible for forgiveness for many borrowers.

The rules specifically permit amounts incurred toward the end of the covered period to be forgivable if they are paid on or before the next regular payroll or billing date, even if this is after the end of the covered period. Also, the only prohibition on prepayments during the covered period is with respect to prepayments of interest on covered mortgages.

- New, unclear rules exist for payroll costs of owner-employees. The rules specify that owner-employees (an undefined term, but presumably including shareholders of C and S corporations) are subject to a cap on their forgivable compensation equal to the lesser of 8/52 of 2019 compensation or \$15,385 per individual in total across all businesses. The rules are unclear about whether this cap applies only to cash compensation (similar to other employees), or whether this cap applies to all payroll costs (including retirement and health care contributions).
- Rules requiring reductions to loan forgiveness are well-explained. Borrowers should carefully review the explanations of the required reductions in loan forgiveness for certain salary/wage reductions or reductions in full-time-equivalent employees. The rules also contain new safe harbors for certain situations outside of an employer's control that would otherwise result in reductions in loan forgiveness.
- Time your application wisely. Last week, the House passed a bill by a vote of 417-1 that would make it much easier for borrowers to obtain full loan forgiveness. The Senate is expected to act in the coming days, and this, among other considerations, should keep borrowers from applying for forgiveness too quickly. No deadline currently exists for when borrowers must apply for forgiveness.

Borrowers should read the application, instructions, and interim final rules in detail, which can be found [here](#), [here](#) and [here](#).

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