

Review of Recent PPP Loan Forgiveness Application Interim Final Rules

Ted R. Batson, Jr., Partner and Tax Counsel
6.1.20



New PPP Loan Forgiveness Interim Final Rules

- The SBA has released two new interim final rules covering PPP loan forgiveness
 - The first provides details on forgivable expenses
 - The second provides information on the loan forgiveness application review process
- The SBA has stated it will soon be releasing additional loan forgiveness FAQs

PPP Loan Forgiveness Process Overview

- File your application with the lender servicing your loan
 - This may be a lender other than the lender who processed your loan
- The lender will make an initial loan forgiveness determination
 - Forgiveness is based on qualifying expenses
 - The lender has 60 days to make its determination and inform the SBA
- The SBA then has 90 days to pay the lender the forgiveness amount plus accrued interest

PPP Loan Forgiveness Process Overview (cont.)

- If the lender denies forgiveness in whole or in part, the lender must provide the SBA and the borrower the reason for the denial
- In addition, the lender must provide the SBA the borrower's:
 - PPP Loan Forgiveness Application
 - PPP Schedule A
 - PPP Borrower Demographic Information Form (if submitted)
- The borrower will have 30 days to request that the SBA review the lender's decision
 - This process is yet to be defined

PPP Loan Forgiveness Process Overview (cont.)

- The SBA retains the right to review any loan forgiveness application
- The SBA may review:
 - Eligibility for the PPP loan in the first place, including
 - Proper application of employer size standards
 - Proper application of affiliation rules
 - Certifications on the loan application
 - The calculation of the original loan amount
 - The use of the loan proceeds
 - The computation of and entitlement to the loan forgiveness amount

PPP Loan Forgiveness Process Overview (cont.)

- The SBA's review will apply guidance available at the time of the loan application
- The SBA may initiate a review at its discretion at any time for a period of up to 6 years from the date the loan is forgiven or repaid in full

PPP Loan Forgiveness Process Overview (cont.)

- The outcome of an SBA review may be appealed using a process still to be defined
- If the SBA finds the borrower was **not eligible** for a PPP loan, the borrower will be required to repay the loan
 - Apparently this repayment will be immediate
- If the SBA finds the borrower is **ineligible, in whole or in part, for loan forgiveness**, the unforgiven portion will be required to be repaid over the two-year term of the loan
 - Payments will start after the six-month loan deferral period

PPP Loan Forgiveness: Incurred or Paid

- “Payroll costs paid **or** incurred during the eight consecutive week (56 days) covered period are eligible for forgiveness.”
- In addition, payroll costs **incurred** during the Covered Period, but **paid** on or before the next regular pay date after the conclusion of the Covered Period (or the Alternative Payroll Covered Period, if elected) are eligible for forgiveness
- This represents a change from the prior webinar
 - This also means that it is possible for more than 56 days of payroll to be forgiven
 - But the extra days must be incurred before the Covered Period and paid during the Covered Period

PPP Loan Forgiveness: Incurred or Paid (cont.)

- **Example**

- Trinity Church uses a bi-weekly payroll schedule
- Trinity's Covered Period begins on Monday, June 1, 2020 and ends on Sunday, July 26, 2020
- The last day of Trinity's payroll period that includes June 1 is Saturday, June 6, 2020
- Salaried employees are paid through the payroll date
- The cutoff for hourly employees is three business days prior to the payroll date
- The full amount of the June 6 payroll is forgivable because it was **paid** during the Covered Period

PPP Loan Forgiveness: Incurred or Paid (cont.)

- **Example 2**

- Trinity's July 19 – August 1 payroll period is made up of payroll costs **incurred** during the Covered Period **and** payroll costs **incurred** after the Covered Period
- Payroll costs between July 19 and July 26 are forgivable
 - Payroll costs after July 27 through August 1 are not forgivable

PPP Loan Forgiveness: Alternate Payroll Covered Period

- Both the application and the interim final rule create an Alternate Payroll Covered Period
 - This alternate period may only be used by employers who utilize a **bi-weekly or more frequent** payroll period
 - It permits the employer to adjust the eight-week period for payroll costs to start on the first day of the first payroll period after the start of the Covered Period
 - The intent appears to be to simplify the accounting for payroll costs

PPP Loan Forgiveness: Bonuses and Hazard Pay

- The interim final rule takes a broad approach to bonuses and hazard pay
 - The interim final rule includes bonuses and hazard pay in the same category as salary and wages
 - Therefore the sum salary, wages, bonuses, and hazard pay may not exceed the annualized rate of \$100,000 per year
 - For the eight-week Covered Period or Alternate Payroll Covered Period, the amount that equals \$100,000 on an annualized basis is \$15,385
 - There does not appear to be a limit on the reasons for which a bonus or hazard pay may be paid

PPP Loan Forgiveness: Payments to Furloughed or Laid-off Employees

- The interim final rule makes it clear that payments to furloughed or laid-off employees during the Covered Period are forgivable
 - This applies even though the employee is unable to perform his or her day-to-day duties

PPP Loan Forgiveness: Non-Payroll Costs

- Non-payroll costs
 - Mortgage interest, rent, and utilities
- Non-payroll costs are eligible for forgiveness if:
 - They are **paid** during the Covered Period
 - They are **incurred** within the Covered Period and paid on or before the next regular billing date
 - Even if the billing date is after the Covered Period

PPP Loan Forgiveness: Non-Payroll Costs (cont.)

- **Example**

- The Covered Period for Joyful Heart Ministries is June 1, 2020 through July 26, 2020
- Joyful Heart receives its May electricity bill in June and pays it in June
 - This payment is eligible for forgiveness because it is made during the Covered Period
- Joyful Heart receives its June electricity bill in July and pays it in July before July 26
 - This payment is eligible for forgiveness because it is made during the Covered Period

PPP Loan Forgiveness: Non-Payroll Costs (cont.)

- **Example (continued)**

- Joyful Heart receives its July electricity bill in August and pays it in August
 - The portion of this payment that relates to the period July 1 – July 26 is eligible for forgiveness because it is made on the first regularly scheduled billing date after the close of the billing period

PPP Loan Forgiveness: Non-Payroll Costs

- The interim final rule continues to include interest payments on not only real estate mortgages but also interest on car loans, office equipment loans, and other equipment loans
- The interim final rule also makes it clear that eligible rent payments include real property rents and auto leases, office equipment leases, and other equipment leases
- No further guidance has yet been provided regarding utility payments

Salary and Wage Reduction Amount

- The calculation looks at whether there has been a greater than 25% change in an employee's weekly salary or hourly wage during the Covered Period when compared to Q1 2020
- Employees who received salary or wages in excess of \$100,000 on an annualized basis *during any pay period in 2019 are excluded*
 - The reference to salary and wages in this exclusionary rule would seem to ignore bonuses

Salary and Wage Reduction Amount (continued)

Example

Employee	Method of Pay	Average Rate of Pay		
		Covered Period	Prior Calendar Qtr	Change in Rate of Pay
John	Salary	\$1,058/week	\$1,481/week	(28.57%)
Sue	Salary	\$1,635/week	\$1,731/week	(5.56%)
Ellen	Salary	\$1,250/week	\$1,250/week	0.00%
Mary	Hourly	\$17.50/hour	\$27.50/hour	(36.36%)
Bill	Hourly	\$22.00/hour	\$25.00/hour	(12.00%)
Steve	Hourly	\$23.00/hour	\$23.00/hour	0.00%

Salary and Wage Reduction Amount (continued)

Example

	John	Mary
(a) Average rate of pay for prior quarter	\$1,481/week	\$27.50/hour
(b) 75% of Prior Calendar Qtr Rate of Pay	\$1,111/week	\$20.63/hour
(c) Average rate of pay for the Covered Period	\$1,058/week	\$17.50/hour
(d) Row (b) less row (c)	\$53	\$3.13/hour
(e) For salaried workers, multiply the result in row (d) by 8 and divide the result by 52	$\$53 \times 8 = \424	
(f) Average hours worked per week in the Prior Calendar Quarter		40
(g) Multiply the amount on row (f) by the amount on row (d)		\$125
(h) multiply the amount on row (g) by 8		\$1,000

PPP Loan Forgiveness: FTE Exceptions

- Extension of an offer to rehire a furloughed or laid-off employee or restore an employee's reduced hours which the employee declines:
 - Offer must be a good faith written offer
 - Offer must be for the same salary or wages and the same number of hours
 - Employee must reject the offer
 - Employer must maintain documentation of the offer and rejection
 - **Employer must inform the state unemployment agency of the employee's rejection of the offer**

PPP Loan Forgiveness: FTE Exceptions (cont.)

- Termination of an employee for cause;
- The voluntary resignation of an employee; or
- An employee's voluntary request for a reduction in hours.

PPP Loan Forgiveness: Documentation

- **Payroll documentation** to submit with your application
 - Bank statements and/or payroll registers from your payroll service showing cash compensation paid
 - Form 941
 - Income, payroll, and unemployment tax filings with state authorities
 - Payment receipts, canceled checks, or account statements along with invoices supporting:
 - Health insurance premiums paid
 - Retirement plan contributions

PPP Loan Forgiveness: Documentation (continued)

- **FTE reduction documentation** to submit with your application
 - Average hours worked for each employee for the Covered Period
 - Average hours worked for each employee for the selected headcount reduction reference period
- **Salary and wage reduction documentation** to retain but not submit
 - Rates of pay during Q1 2020
 - Rates of pay during the Covered Period

PPP Loan Forgiveness: Documentation (continued)

- **FTE reduction safe harbor documentation** to retain but not submit
 - Average hours worked for each employee for the pay period including February 15, 2020
 - Average hours worked for each employee for the period February 15, 2020 through April 26, 2020
 - Average hours worked for each employee at June 30, 2020

PPP Loan Forgiveness: Documentation (continued)

- **Mortgage interest documentation** to submit with your application
 - Canceled checks or payment receipts
 - Lender amortization schedule
 - Mortgage statements from February 2020 through the month after the end of the Covered Period
- **Rent documentation** to submit with your application
 - Current lease agreement
 - Receipts, canceled checks or electronic payment confirmations
 - Lessor account statements from February 2020 through the month after the end of the Covered Period

PPP Loan Forgiveness: Documentation (continued)

- **Utility documentation** to submit with your application
 - Invoices from February 2020 through the month after the end of the Covered Period
 - Receipts, canceled checks or electronic payment confirmations, or account statements
- These documentation requirements are mandatory

NEW – CapinCrouse PPP Loan Forgiveness Application Services

- We can help your nonprofit navigate all aspects of filing for PPP loan forgiveness
- Learn more about CapinCrouse PPP Loan Forgiveness Application Services at info.capincrouse.com/ppp

Additional COVID-19 Resources

Things are changing fast! Visit [capincrouse.com](https://www.capincrouse.com) and click on the home page banner below for the latest updates.



Thank you!

Ted R. Batson, Jr., Partner & Tax Counsel
Professional Practice Leader – Tax
CapinCrouse LLP

✉ tbatson@capincrouse.com

📞 505.50.CAPIN ext. 1105



© Copyright CapinCrouse 2020