

Additional Loan Forgiveness FAQs: Some Re-Hashed, Some New Nuggets, More Needed

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The U.S. Small Business Administration (SBA) released a series of Frequently Asked Questions (FAQs) on loan forgiveness. Issued on August 4, 2020, there are 23 FAQs in all, broken down into four sections:

- General Loan Forgiveness FAQs,
- Loan Forgiveness Payroll Costs FAQs,
- Loan Forgiveness Nonpayroll Costs FAQs, and
- Loan Forgiveness Reductions FAQs.

What is perhaps most remarkable about this round of FAQs is the lack of new information it provides. While providing some clarification on a few points, most of the questions simply re-hash information that has already been covered in previous FAQs and Interim Final Rules. Most of the significant questions remain unanswered and will hopefully be addressed in the near future.

General Loan Forgiveness FAQs

This section contains three FAQs addressing the forgiveness application process. These state:

- Sole proprietors, independent contractors and self-employed individuals who had no employees at the time of the PPP application and did not include employee salaries in their Borrower Application Form should use Loan Forgiveness Application Form 3508EZ to apply for forgiveness. (This was already covered by previous SBA guidance.)
- PPP lenders may accept scanned copies of loan forgiveness applications and certification documents as well as E-signatures or E-consents that comply with the requirements of the Electronic Signatures in Global and National Commerce Act. If electronic signatures are not feasible, then wet-ink (original) signatures may be accepted as long as proper steps are taken by the lender to authenticate the signatures.
- The final FAQ of this section states that a borrower will not be required to begin making loan payments until the forgiveness amount is remitted to the lender by the SBA, as long as the loan forgiveness application is submitted within ten months of the completion of the Covered Period. Interest accrues from the date the loan was disbursed through the forgiveness date and the borrower is responsible for accrued interest on the unforgiven portion of the loan, if any. (Again, nothing new here.)

Loan Forgiveness Payroll Costs FAQs

This section contains eight FAQs which, again, provide almost no new information. The first three FAQs deal with the application of the phrase *payroll costs incurred and payroll costs paid* and simply re-hash previous guidance. FAQs 4 and 5 review the definition of *cash compensation*. FAQs 6 and 7 cover health and retirement benefits. These two FAQs provide:

- Employer paid health benefits (for employees, not certain owners) that are paid or incurred during the Covered Period or Alternative Covered Period qualify for forgiveness as long as the premiums are paid during the applicable period or by the next premium due date after the end of the applicable period. However, forgiveness is not provided for group health benefits accelerated from

periods outside the Covered Period or Alternative Covered Period (i.e., prepaid health benefits do not qualify for forgiveness).

- Employer contributions for employee retirement benefits (but not those of certain owners) that are paid or incurred by the borrower during the Covered Period or Alternative Covered Period are eligible for forgiveness. Forgiveness is not provided for retirement benefits accelerated from outside the applicable period (i.e., prepaid retirement benefits do not qualify for forgiveness). While not addressed specifically, this appears to allow forgiveness for accrued retirement benefits that are *paid* during the applicable period.

FAQ 8 addresses the treatment of owner compensation and benefits. This FAQ goes into quite a bit of detail about how cash compensation and benefits are determined for owner-employees, substantially all of which has been covered in previous guidance. The guidance fails to provide a definitive definition of the term “owner-employee,” but it does seem to infer that any individual with any ownership interest falls into this category. This FAQ also fails to indicate whether attribution rules apply to close relatives (spouses and children) of owners, other than with regard to certain benefits.

Loan Forgiveness Nonpayroll Costs FAQs

Like the section on payroll costs, this section mostly rehashes previous guidance; although there are a few new points:

- Payments on leases and/or interest on secured loans that existed prior to February 15, 2020, expired on or after February 15, 2020, and were renewed, extended or refinanced are eligible for forgiveness.
- Utility costs include payments of transportation utility fees assessed by state or local governments. There is no mention regarding the inclusion or exclusion of gas for a business vehicle as a transportation utility costs. An earlier ruling indicating that gas for a vehicle is a utility cost created a lot of confusion. While this release of FAQs seems to exclude gas for a vehicle, failure to address it specifically means the confusion will continue.

Loan Forgiveness Reduction FAQs

The five FAQs in this section do little more than restate existing guidance on FTE reduction exceptions and the salary/hourly wage reduction. Perhaps the only new information in this section relates to seasonal employers. FAQ 2 states that a seasonal employer must use the same 12-week period used to calculate its PPP loan amount as its reference period for purposes of determining the FTE reduction ratio.

There is nothing in this section that addresses the computation of FTEs and FTE reductions for borrowers that choose to file for loan forgiveness before the end of their Covered Period in determining forgivable costs.

In Conclusion

Overall, this release of FAQs is a big disappointment. While it does a good job summarizing previous guidance, it provides almost no new information and nothing that is particularly useful. Perhaps the SBA is waiting for Congress to act before they address the most significant pending issues and release an updated loan forgiveness application.

Contact Us

As always, for further guidance and assistance, please reach out to your PKF O'Connor Davies engagement team members, or Bruce L. Blasnik, CPA, CGMA, Partner and Bryan Decker, CPA, Partner at LoanForgiveness@pkfod.com. We are here to help.

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