

Finally! Initial PPP Loan FAQs Released

This afternoon, the Small Business Administration (SBA) and the Treasury Department published a set of frequently asked questions concerning forgiveness of loans under the Paycheck Protection Program (PPP). [The new FAQs](#) represent the first substantive guidance on PPP loan forgiveness since late June.

On the whole, the FAQs confirm and restate many items from earlier interim final rules, which we've reported on. But a few important clarifications will assist borrowers that are working through the forgiveness process:

- Sole proprietors, independent contractors, or self-employed individuals with no employees should complete the ["EZ" forgiveness application](#).
- Borrowers who pay biweekly or more frequently for payroll expenses can elect an Alternative Payroll Covered Period (APCP), which aligns with their payroll schedule, and therefore will not be required to calculate payroll costs for partial pay periods. But borrowers with twice-a-month or less frequent payroll periods will need to calculate payroll costs for partial pay periods.
- In addition to salaries and wages, borrowers may receive forgiveness for additional cash compensation paid to employees, including lost tips, lost commissions, bonuses, or other forms of incentive pay.
- For self-employed individuals and owners who work at their business—i.e., owner employees—payroll compensation is capped at \$15,385 (if using an 8-week covered period) or \$20,833 (if using a 24-week covered period).
 - **C-Corporation owner-employees:** "Cash compensation" for C-corporation owner-employees is defined as it is for all other employees. In addition, loan forgiveness is permitted for:
 - state and local taxes paid by the employer,
 - employer retirement contributions (capped at 2.5/12 of their 2019 employer retirement contribution), and
 - employer contributions for their employee health insurance.
 - **S-Corporation owner-employees:** "Cash compensation" likewise is defined as it is for all employees. And loan forgiveness is permitted for state and local taxes paid by the employer and employer retirement contributions (capped at 2.5/12 of their 2019 employer retirement contribution). **But** employer contributions for health insurance are not eligible for forgiveness for S-corporation employees who hold at least a 2% stake in the business.
- Notably, eligible non-payroll costs incurred **before** the Covered Period, but paid **during** the Covered Period are eligible for forgiveness. While this also holds true for payroll costs, the clarification is notable as non-payroll costs were more likely to be outstanding for many borrowers.
- Regarding the specific issue of eligible health insurance premiums, only the portion of the premiums paid by the borrower for coverage during the applicable Covered Period or Alternative Payroll Covered Period is included, not any portion paid by employees or beneficiaries or any portion paid for coverage for periods outside the applicable period.
- Interest on unsecured credit is a permissible use of PPP funds, but is not eligible for loan forgiveness because the loan is not secured by real or personal property.

- If a lease or mortgage existed before February 15, 2020, and was renewed or refinanced, the lease or interest payments are eligible for forgiveness.
- “Payment for a service for the distribution of...transportation,” as used in the CARES Act, means payment for transportation utility fees assessed by state and local governments.
- All employees are included when calculating the potential FTE reduction exceptions in [Table 1 of the PPP Schedule A worksheet](#). As such, employees who made more than \$100,000 should be included (these are the individuals listed in Table 2 of the PPP Schedule A worksheet).

These FAQs assuredly will not be the last pronouncement from SBA and Treasury on PPP loan forgiveness. We continue to monitor these developments on PPP loan forgiveness, including how the process might be impacted by changes being proposed in the current stimulus bill discussions.

Our Chambliss team continues to monitor legal developments in connection with the COVID-19 pandemic. Please contact [Jim Catanzaro](#), [Justin Furrow](#), or your relationship attorney if you have questions or need additional information.

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