



## Alerts

### New Supplemental Guidance Issued for PPP Loan Program

August 11, 2020

*Hinshaw Alert*

On August 4, 2020, the Small Business Administration (SBA) and the U.S. Department of the Treasury released [new FAQs](#) to provide further guidance on Paycheck Protection Program (PPP) loan questions and supplement previously issued PPP rules. We outline these FAQs below.

The agencies also indicated that the SBA would start accepting forgiveness applications on August 10.

### Payroll Costs

#### Employee Group Health Care

Expenses for employee group health care benefits that are paid or incurred by the borrower during the applicable period (the Covered Period, or the Alternative Payroll Covered Period) are eligible for loan forgiveness.

The following healthcare expenses are not eligible for forgiveness:

- expenses for group health care benefits paid by employees (or beneficiaries of the plan) either pre-tax or after tax, such as the employee share of their health care premium;
- expenses for group health benefits accelerated from periods outside the applicable period; and
- any portion of the insurance premiums paid by employees or beneficiaries or any portion paid for coverage for periods outside the applicable period.

Insurance premiums paid or incurred during the applicable period under an insured group health plan are considered payroll costs, 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.

In the Owner-Employee Compensation [discussion below](#) we address the rules that apply to owner-employee health insurance.

#### Attorneys

Timothy M. Sullivan

#### Service Areas

Business & Commercial  
Transactions



## Retirement Benefits

Employer contributions for employee retirement benefits that are paid or incurred by the borrower during the applicable period qualify as payroll costs and are eligible for loan forgiveness.

The following retirement expenses are not eligible for forgiveness:

- any retirement contributions deducted from employees' pay or otherwise paid by employees; and
- employer contributions for retirement benefits accelerated from periods outside the applicable period.

The Owner-Employee Compensation [discussion below](#) addresses the rules that apply to owner-employee retirement benefits.

## Owner-Employee Compensation

In addition to the specific caps discussed below, the FAQs indicate that the maximum amount of compensation that can be counted towards forgiveness may not exceed (i) \$20,833 or (ii) 20.833% of 2019 compensation for individuals with an ownership position in an S-corporation, C-corporation, partnership, or a sole proprietorship. Further, this compensation limit applies cumulatively to all companies that pay compensation to the owner. For example, if an owner operates two businesses, the borrower may only deduct \$20,833 or 20.833% of 2019 compensation for both businesses.

For borrowers that received a PPP loan before June 5, 2020 and elected to use an eight-week covered period, this cap is \$15,385. They are also subject to the same limitations discussed in the previous paragraph.

If their total compensation across businesses that receive a PPP loan exceeds the cap, owners can choose how to allocate the capped amount across different businesses.

### *C-Corporations*

The cash compensation paid to a C-corp owner-employee—defined as an owner who is also an employee, including where the owner is the only employee—may be forgiven in an amount up to 2.5/12 of his or her 2019 employee cash compensation, with cash compensation defined as it is for all other employees.

A C-corp borrower is also eligible for loan forgiveness for:

- payments for employer state and local taxes paid by the borrower and assessed on its employee compensation;
- the amount paid by the borrower for employer contributions for its employee health insurance; and
- employer retirement contributions to its employee retirement plans capped at the amount of 2.5/12 of the 2019 employer retirement contribution.

Such non-cash compensation payments do not count toward the \$20,833 individual cap.

### *S-Corporations*

The cash compensation paid to an S-corp owner-employee—defined as an owner who is also an employee—may be forgiven in an amount up to 2.5/12 of his or her 2019 employee cash compensation, with cash compensation defined as it is for all other employees.

An S-corp borrower is also eligible for loan forgiveness for:

- payments for employer state and local taxes paid by the borrower and assessed on its employee compensation; and
- employer retirement contributions to its employee retirement plans capped at the amount of 2.5/12 of their 2019 employer retirement contribution.



Because employer contributions for health insurance are included in cash compensation, they are not eligible for forgiveness for S-corp employees with at least a 2% stake in the business. This includes employees who are family members of an at least 2% owner under the family attribution rules of 26 U.S.C. 318.

Such non-cash compensation payments do not count toward the \$20,833 individual cap.

### *Self-Employed Schedule C (or Schedule F) Filers*

The compensation that is eligible for loan forgiveness for self-employed Schedule C (or Schedule F) individuals—including sole proprietors, self-employed individuals, and independent contractors—is limited to 2.5/12 of 2019 net profit as reported on IRS Form 1040 Schedule C line 31; or 2.5/12 of 2019 net farm profit, as reported on IRS Form 1040 Schedule F line 34; or for new businesses, the estimated 2020 Schedule C (or Schedule F).

Health insurance, retirement, or state or local tax payments are not eligible for loan forgiveness. Health insurance and retirement expenses are paid out of such person's net self-employment income.

If the borrower did not submit its 2019 IRS Form 1040 Schedule C (or F) to the lender when the borrower initially applied for the loan, it must be included with the borrower's forgiveness application.

### *General Partners*

General Partner compensation that is eligible for loan forgiveness is limited to 2.5/12 of their 2019 net earnings from self-employment that is subject to self-employment tax, which is computed from 2019 IRS Form 1065 Schedule K-1 box 14a—reduced by box 12 section 179 expense deduction, unreimbursed partnership expenses deducted on their IRS Form 1040 Schedule SE, and depletion claimed on oil and gas properties—multiplied by 0.9235.

Compensation is only eligible for loan forgiveness if the payments to partners are made during the applicable period. Health insurance, retirement, or state or local tax payments are not eligible for loan forgiveness.

If the partnership did not submit its 2019 IRS Form 1065 K-1s when initially applying for the loan, it must be included with the partnership's forgiveness application.

### *LLC Owners*

LLC owners must follow the instructions that apply to how their business was organized for tax filing purposes for 2019 tax year, or if a new business, the expected 2020 tax filing status.

## Cash Compensation

Payroll costs include all forms of cash compensation paid to employees, including tips, commissions, bonuses and hazard pay, and that forgivable cash compensation per employee is limited to \$100,000 on an annualized basis.

## Nonpayroll Costs

### Interest

Payments of interest on business mortgages on real or personal property, such as an auto loan, are eligible for loan forgiveness.

Unless a loan is secured by real or personal property, interest on an unsecured loan is not eligible for loan forgiveness. Interest on unsecured credit incurred before February 15, 2020 may be paid using PPP loan proceeds but this expense is not eligible for forgiveness.



## Leases

If a lease that existed prior to February 15, 2020 expires on or after February 15, 2020 and is renewed, the lease payments made pursuant to the renewed lease during the covered period are eligible for loan forgiveness.

If a mortgage loan on real or personal property that existed prior to February 15, 2020 is refinanced on or after February 15, 2020, the interest payments on the refinanced mortgage loan during the covered period are eligible for loan forgiveness.

## Transportation

A service fee for the distribution of transportation (transportation utility fees assessed by state and local governments) is eligible for loan forgiveness.

## Loan Forgiveness Reductions

### FTE Test

In calculating its loan forgiveness amount, a borrower may exclude any reduction in FTE employees if the borrower is able to document the following in good faith:

- an inability to rehire individuals who were employees of the borrower on February 15, 2020; and
- an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020.

Borrowers must inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection of the offer. To demonstrate compliance with this exemption, a borrower should retain the written offer to rehire an individual, written record of the offer's rejection, and a written record of efforts to hire a similarly qualified individual.

The FTE applies to all employees. Thus, borrowers should include employees who made more than \$100,000 when making this calculation.

### Wage Test

Certain pay reductions during the applicable period may reduce the amount of loan forgiveness a borrower will receive. If the salary or hourly wage of a covered employee (as defined below) is reduced by more than 25% during the applicable period, the portion in excess of 25% reduces the eligible forgiveness amount unless the borrower satisfies the Salary/ Hourly Wage Reduction Safe Harbor (as described in the Loan Forgiveness Application).

A covered employee is an individual who:

- was employed by the borrower at any point during the applicable period and whose principal place of residence is in the United States; and
- received compensation from the borrower at an annualized rate less than or equal to \$100,000 for all pay periods in 2019 or was not employed by the borrower at any point in 2019.

For purposes of calculating reductions in the loan forgiveness amount, the borrower should only take into account decreases in salaries or wages. Thus, reductions in other benefits need not be considered when making this calculation.



## PPP Loan Payments

### Interest on the PPP Loan

While interest accrues on a PPP loan from the date funds are received, the borrower will not have to pay the interest accrued on that portion of the loan that is forgiven. Conversely, the borrower must pay the accrued interest on any portion of the loan that is not forgiven.

### Payments on PPP Loan

A borrower will not be required to make any payments on the PPP loan as long as it submits the forgiveness application within ten months of the completion of the applicable period. Further, if submitted within such time frame, no payments need be made until the SBA determines the amount to be forgiven.

If the loan is fully forgiven, the borrower will not owe anything on the loan; accrued interest will also be forgiven. Alternatively, if only a portion of the loan is forgiven, any remaining balance due on the loan must be paid by the maturity date. All accrued interest must also be paid. If the borrower's forgiveness application is denied—either in whole or part—any remaining balance due on the loan must be paid by the maturity date. Additionally, all accrued interest must be paid.