Barley Snyder

Latest PPP Guidance Breaks Down Big Questions

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The U.S. Small Business Administration has released additional guidance for businesses for questions concerning the forgiveness of the Paycheck Protection Program loans.

The latest FAQs from the SBA and the U.S. Department of the Treasury touch on four categories related to loan forgiveness: general, payroll costs, non-payroll costs and the impact of payroll reductions on loan forgiveness.

General

The general FAQs direct sole proprietors, independent contractors and self-employed individuals who had no employees at the time of their PPP loan applications to use the Loan Forgiveness Application Form 3508EZ. PPP lenders may accept scanned copies of loan forgiveness applications and documents, as well as all forms of E-consent and E-signatures in compliance with the Electronic Signatures in Global and National Commerce Act.

The guidance specifies that, as long as a borrower submits a loan forgiveness application within 10 months of the end of the covered period, the borrower is not required to make any loan payments until the forgiveness amount is remitted to the lender by the SBA. The covered period is either the 24-week-period beginning on the PPP loan disbursement date, or if the borrower received its PPP loan before June 5, the borrower may choose to use an eight-week covered period. A borrower is responsible for paying accrued interest on any amount of the loan that is not forgiven. Interest accrues between the time of the disbursement of the loan and the remittance by the SBA of the forgiven amount.

Payroll Costs

This latest guidance provides information on owner compensation. The maximum compensation that may be eligible for forgiveness for owners who work in their business is the lesser of $20,833 or 20.833% of 2019 compensation. Where an eight-week covered period is used, the maximum forgivable compensation is the lesser of $15,385 or 15.385% of 2019 compensation.

Specific guidance is directed to individuals with an ownership interest in C-corporations, S-corporations, Schedule C or Schedule F sole proprietorships, general partnerships and LLCs. The cash compensation of an owner-employee of a C-corporation or S-corporation which is eligible for loan forgiveness is up to 2.5 months of their 2019 employee cash compensation. The compensation of Schedule C or Schedule F sole proprietors which is eligible for forgiveness is up to 2.5 months of 2019 net profit as reported on the respective Schedule C or Schedule F IRS form. The compensation of general partners which is eligible for loan forgiveness is up to 2.5 months of their 2019 net earnings subject to self-employment tax. LLC owners should follow the instructions that apply to how their business was organized for tax filing purposes for 2019.

Another important clarification is that loan forgiveness is not provided for expenses for group health care benefits or employer contributions for retirement benefits accelerated from periods outside the Covered Period. However, the term "accelerate from" remains undefined and would benefit from future clarification.

Non-payroll Costs

The government provided much-anticipated clarification regarding the eligibility of transportation costs for loan forgiveness.

Under the CARES Act, covered utility payments, which are eligible for forgiveness, include a "payment for a service for the distribution . . . of transportation." There was confusion about whether this category includes expenses like fuel or mileage. The FAQs answer seems to preclude that possibility, defining a service for the distribution of transportation as a reference to "transportation utility fees assessed by state and local governments." Nevertheless, transportation costs continue to remain ambiguous because previous guidance suggests that work-related fuel use could be eligible for forgiveness.

The guidance specifies that electric bill payments, even where charges are invoiced separately, are entirely eligible for loan forgiveness.

Impact of Pay Reduction on Loan Forgiveness

The guidance outlines the ramifications employee pay reductions may have on loan forgiveness. If the salary or wage of a covered employee is reduced by more than 25% during the covered period, the portion in excess of 25% reduces the eligible loan forgiveness amount, unless the borrower satisfies the Wage Reduction Safe Harbor described in the Loan Forgiveness Application. The safe harbor in the application provides the borrower to be eligible for 100% forgiveness. However, any employee pay reductions instituted between February 15 and April 26 must be restored to the February 15 level by the time the borrower submits a forgiveness application, or by December 31, 2020, whichever date it earlier.

If you have any questions on this new guidance and how it can affect your PPP loan, please contact Tim Malloy, Paul Mattaini or Troy Rider.

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