

Summary of the SBA's Loan Forgiveness Interim Final Rule 2020-05-24

The biggest things I see that are new:

1. P.8/.11 – 3. Payroll costs defined. **Includes furloughed employees that are not performing work** but are on the payroll based upon when they would be scheduled to work
 1. **P.11 - Hazard pay and bonuses qualify.**
2. P.11/.12 – Establishment of caps on the amount of loan forgiveness available for **owner-employees and self-employed individuals'** own payroll compensation. Specifically, for owner employees the amount requested can be **no more than the lesser of 8/52 of 2019 cash compensation and employer paid retirement and health benefits** (i.e., approximately 15.38% of 2019 compensation) or \$15,385 per individual in total across all businesses. **For self-employed individuals, including Schedule C filers and general partners, no additional forgiveness is provided for retirement or health insurance contributions.**
3. P.12 – **Nonpayroll costs** – **clearly includes costs for both paid and incurred** for last period – and provided an example allowing forgiveness for May and June invoices paid, and July incurred and paid later (2 months paid plus portion of last bill incurred during the covered period)
4. P.13 – Reductions of amount forgiven - exclusions
5. P.14 – Reiteration of the **previously announced guidance** setting the rules for when employers can exclude from loan forgiveness calculations **employees who refuse to be rehired**. The new guidance reiterates that in calculating any reduction in full time equivalent employees, employers can exclude any employees who decline a good faith offer to return at the same pay and hours as before they were laid off or furloughed. The guidance released Friday includes **a requirement for borrowers to notify the state unemployment office of an employee's rejected offer within 30 days of that rejection.**
 1. The requirement to notify state unemployment offices is a big one.
6. P.15/.18 – Restore FTE by 6/30; FTE reductions, definition of FTE as 40 or simplified method of .5 (apply method consistent for both periods); reduction in pay (calculation performed on a per employee basis)
7. P.19/20 – Connection between FTE count and salary reductions – to avoid double penalty, the salary/wage reduction applies only to the portion of the salary/wage deduction that is not attributable to the FTE reduction.
8. P.21 – Restore salary/wage reduction or FTE count by 6/30 to avoid a reduction in loan forgiveness amount.
9. P.22 – No reduction when employees are fired for cause, voluntarily resign, or voluntarily request a schedule reduction.
10. P.22/23 – Documentation requirements (brief)

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1. P.7/.8 SBA may review – if for example the loan forgiveness documentation suggests the borrower may be ineligible for forgiveness