

All: In typical SBA fashion, they decided to drop more rules on us at about 7:30 at night on Friday. Because accountants have nothing better to do over the weekend than read into this and advise our clients.

We are just a couple hours into these rules getting dropped into our laps, and it is only an 11-page document when we probably needed another couple hundred pages in guidance. Feel free to read it yourself if you want to get a headache.

<https://content.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf>

The good news is that we do at least have this application. But the bad news is that we're going to get a whole set of FAQs and guidance about this probably spread over the course of the next several weeks because there are still a boatload of questions that we all have about this. Senator Rubio has promised more lenient rules, but so far, this application is anything but lenient for borrowers.

To further complicate matters, the House just passed what's called the HEROES Act, and if that passed the Senate (spoiler: it won't), it would change all the rules across the board of PPP. Even though it won't pass the Senate, and Trump wouldn't sign it even if it did, the framework in HEROES could change the structure of PPP dramatically in a bill that gets bipartisan support in the not-distant future.

I'm hesitant to share too much about what we have to avoid confusion for what is inevitably going to be a period of a lot of change. However, I will give you a few highlights from this. Please note that these are all premised with "At this point." Again, we expect changes. Lots and lots of changes.

1: All borrowers are going to have to fill out what looks like a nightmarish application at the end of this 8-week period that will take a boatload of time and has a slew of pitfalls buried into it. However, at least for now, this is the only path to forgiveness of these PPP loans. Don't worry; I'll be taking care of this for all of you. No one is going to be filing for forgiveness before July no matter when your 8-week period ends because forgiveness is going to require 2nd quarter Form 941s and unemployment insurance forms.

2: At least to this point, there isn't a blanket forgiveness rule for anyone. It was widely expected that guidance was going to provide loans under \$350,000 to be fully forgiven with minimal documentation. To date, this is far from that.

3: Your 8-week period for PPP is either the 56 days from the day you received your PPP loan OR the 56 days from your pay period immediately following receiving your PPP loan. So if you received your PPP on May 4 and your payroll day is Friday, your 56 days can start counting either from May 4 OR May 8 -- it'll be our choice. This is particularly helpful for those of you who have biweekly or other abnormal pay cycles with your payroll to make sure we get in a full set of pay periods.

4: You cannot give yourself a raise and get forgiveness on it. Many of us have discussed the idea of giving yourselves and your family members more money to account for some of the reduction you had in wages for your other employees. That's now officially a no-no, and I don't expect that to change. You can pay yourself what you paid yourself last year and not a cent more than that.

5: You are going to have to make plans to make sure that you pay each of your employees at least 75% of what they had made in the **1st quarter of 2020**. This is different from our assumption before, and it's

generally going to be more favorable since you probably paid your staff less from 1/1/20-3/31/20 than in any other prior period.

6: You are going to have to keep the same count of employees in order to get full forgiveness. However, what is new here is that the basis which we can use for full-time employees (FTEs) is the number of FTEs you had either on average from 2/15/19-6/30/19 OR 1/1/20-2/29/20. This is consistent with the CARES Act but is inconsistent with the Interim Final Rules drafted by the SBA. **THIS WILL BE CLARIFIED.** There's no doubt that this part of the rule is going to be altered in some way, hopefully to make it more lenient and not more stringent. But right now, this is in direct contradiction with other rules, and something is going to have to be clarified.

7: If you have reduced your number of employees from the lower of 2/15/19-6/30/19 OR 1/1/20-2/29/20, you are going to have to restore those employees by June 30. That effectively gives you a month and a half to have the right number of people on your payroll. Yes, I realize that June 30 is after the 8-week period has expired for most of your loans. But that's the rule and is consistent with the language in the CARES Act. Can you hire people on June 30 and fire them July 1? Doesn't seem like you can't. One of the many loopholes that still need to be closed.

8: For those of you who received EIDL grants, the amount you received of the EIDL grant will reduce your PPP forgiveness. Example: I know many of you have around \$2,000 PPP loans but received \$1,000 in EIDL grants. Your maximum forgiveness of your PPP loan is \$1,000, and the other \$1,000 will be amortized and paid back over 18 months.

9: It was further clarified that only 25% of the PPP loan can be used for non-payroll costs. That 25% can be used on rent, utilities and interest on debt payments for debt that you had prior to 2/15/2020.

Again, this is just a tip of the iceberg. Don't take any of this as absolute gospel at this point. There's also nothing that any of you have to do right now except to keep good records of everything you're spending that PPP money on. This is all for your info only. I will continue to keep everyone up to date as more details become available. For those of you who have yet to apply for your PPP loans that are on this email, I'll be in touch either over the weekend or on Monday about your specific situations.

I know you're going to have questions, and feel free to fire them back at me. But be aware that almost all questions right now are going to be met with, "Well, this is what I think right now..."

Stay safe out there, my friends.

Adam Markowitz, EA
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