



Interim Final Rule – Paycheck Protection Program

In review of the Interim Final Rule issued last night on the Paycheck Protection Program, we wanted to shed some light on notable items that ran contrary to the law, clarified the law, or created more confusion. Below are our summary points:

- Businesses engaged in any activity that is illegal under federal, state, or local law are not eligible, regardless of the number of employees.
- Aggregate payroll costs will be used from the “last twelve months,” meaning the year preceding the application date, not calendar 2019. There was confusion as to how this would be determined in the initial law.
- Independent Contractors do not count as employees for purposes of the max loan calculation or the forgiveness calculation. It is still unclear as to whether payments made to independent contractors are includible for “payroll costs,” but leaning on the law, it would make sense to leave those amounts in the calculation and discuss with the SBA Loan Officer to exclude if deemed necessary.
- Interest Rate is now listed as 100 basis points, which would be the same 0.50% over two years, but the rule does not state if that is Annual Percentage Yield (APY) or yield over the life. The rule references the FDIC CD rates, which are 42 basis points on an APY basis – stating that is a better rate than a CD – but does not go into detail on these loans. We are likely splitting hairs here, but there was a change in nomenclature without really defining the change or lack thereof to the interest rate.
- Question 2o asks “Can my loan be forgiven in whole or in part?” and the answer states “Yes. The amount of the loan forgiveness can be up to the full principal amount of the loan and any accrued interest.” This is noteworthy, as the law states that the expected forgivable portion shall not exceed the principal amount.
- The Administrator has limited non-payroll costs in the forgiveness calculation to 25% of the loan amount.
 - The Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll.
- SBA has formalized Form 2483 as the application. The application has only a few minor changes when compared to the sample initially provided.
- Any amounts refinanced from an EIDL to a PPP will be included as “payroll costs” for purposes of the 75% test and in determining the forgiveness of the loan, however the borrower will have to document the proceeds used for payroll costs in order to determine the forgiveness amount.
- If an applicant misuses funds from a PPP loan, the SBA can immediately request repayment of the loan and the applicant can be charged with fraud.

Ultimately, much of this will be open to interpretation by the banks issuing the loans and the forgiveness applications issued by the SBA. As we know more, we will be continuing to update our materials at <https://www.peasecpa.com/covid-19-resource-center/>.



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