

PPP Update: Amended Max Compensation Rule for Owner-Employees with Less Than 5 Percent Ownership and Eligible Nonpayroll Costs Clarified

On August 24, 2020, the Small Business Association (SBA) issued guidance on the Paycheck Protection Program (PPP) pertaining to employee-owner compensation and nonpayroll costs eligible for loan forgiveness.

Payroll Costs – Owner-Employee Compensation

The SBA stated that **individuals with an ownership of less than 5% of a C- or S- Corporation borrower is exempt from application of the PPP owner-employee compensation rule** when determining the amount of their compensation that is eligible for loan forgiveness. This means that the forgiveness-eligible compensation of owner-employees with less than 5% ownership is no longer capped at an amount of 2.5 months' worth of 2019 net profit (max of \$20,833) for the extended 24-week period, but rather, the employee salary amount (max of \$46,154). The SBA's rationale was that owner-employees with less than 5% ownership in the company likely have no meaningful ability to influence decisions over how loan proceeds are allocated. However, the newly issued guidance does not address if this rule also applies to members owning less than 5% of interests in an LLC.

Nonpayroll Costs – Tenant, Sub-Tenant, and Household Expenses

The SBA stated that **amounts attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, in the context of home-based businesses, household expenses are not eligible for forgiveness.**

The SBA provided some examples:

- If borrower rents an office building for \$10,000 per month and subleases out a portion of the space to other businesses for, say, \$2,500 per month, only \$7,500 per month is eligible for loan forgiveness.
- If a borrower has a mortgage on an office building it operates out of but leases out a portion of the space, the portion of mortgage interest that is eligible for loan forgiveness is limited to the percent share of the fair market value of the space that is *not* leased out.
- If a borrower shares rented space with another business, when determining eligible loan forgiveness, the borrower must prorate rent and utility payments in the same manner as on the borrower's 2019 tax filings, or if a new business, the borrower's expected 2020 tax filings.
- If a borrower works out of his or her home, when determining eligible loan forgiveness, the borrower may include only the share of covered expenses that were deductible on the borrower's 2019 tax filing, or if a new business, the borrower's expected 2020 tax filings.

Nonpayroll Costs – Rent, Lease, and Mortgage Payments to a Related Party

The SBA stated that **rent or lease payments to a related party may be eligible for forgiveness, but mortgage interest payments to a related party are not eligible for forgiveness.** Any ownership in common between the business and the property owner is a related party.

Further, rent payments to a related party are eligible for forgiveness as long as (1) the amount of loan forgiveness requested for rent or lease payments to a related party is no more than the amount of mortgage interest owed on the property during the covered period that is attributable to the space being rented by the business, and (2) the lease and the mortgage were entered into prior to February 15, 2020. The borrower must provide its lender with mortgage interest documentation to substantiate these payments.

The attorneys at Bond, Schoeneck & King can help by answering your questions regarding the changes to the PPP and how it affects your business. Please contact [Jeffrey B. Scheer](#), any of the [attorneys](#) in the [Business and Transactions practice](#) or the attorney at the firm with whom you are regularly in contact.



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