

PPP Rehire Exemption Previewed by FAQ

Rehire Exemption Preview

Over the weekend, the SBA/Treasury [FAQ guidance](#) was updated with Question #40 which previews relief for borrowers that have had difficulty rehiring employees.

Question #40 (full text below) explains that loan forgiveness amounts will not be reduced for borrowers that laid off employees and offered to rehire the same employees, but employees declined to return to work. Under Section 1106(d)(6) of the CARES Act, the SBA & Treasury may prescribe regulations granting de minimis exemptions from loan forgiveness requirements. FAQ #40 previews exemption relief that the SBA & Treasury intend to issue in upcoming guidance.

40. Question:

Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?

Answer:

No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

PPP Non-Deductible Expenses

Last week, the IRS released [Notice 2020-32](#) which provided that expenses paid with forgiven PPP loan funds are non-deductible.

Congressional tax committee writers Senators Chuck Grassley and Richard E. Neal both subsequently commented that this treatment was not the intent when the CARES Act was written. Senator Neal went as far as to say that Congress members "are planning to fix this in the next response legislation," which suggests that expenses paid with forgiven PPP loan funds may become deductible at a later time. Since the CARES Act did not expressly address the deductibility of these expenses, this "fix" would likely need to be made by legislators, not the IRS.

Waiting for Forgiveness Guidance

Amid pressure from borrowers, lenders, politicians, and the public the SBA & Treasury is expected to release guidance soon clarifying unanswered questions surrounding PPP loan forgiveness. O'Connor & Drew is monitoring for updates and plans to provide a webinar when more information becomes available.