

New SBA Forgiveness IFR – Treatment of Owners and Forgiveness of Certain Nonpayroll Costs

On August 24, 2020, the U.S. Small Business Administration (SBA) issued a new Interim Final Rule (IFR) to provide additional guidance concerning the ownership percentage that triggers the applicability of the owner compensation rule for forgiveness purposes and limitations on the eligibility of certain nonpayroll costs for forgiveness. This IFR clarifies the reporting of certain owner compensation described in previously issued IFRs, and which owners are not subject to the owner-employee rules. Additional guidance is also provided related to limitations on related party rent eligible for forgiveness and costs associated with tenants, sub-tenants, and home-based businesses.

Below is a summary of the key provisions of the IFR:

- The owner-employee compensation rules, described in the Loan Forgiveness FAQ's posted by the SBA, cap the forgivable amount of compensation for owner-employees based on 2019 compensation, and limit the forgivable amounts of certain benefits paid on behalf of owner-employees. Under this new IFR, the SBA indicates that owner-employees with less than a 5% ownership stake in a C-corporation or S-corporation are not subject to the owner-employee compensation rules and should be treated/reported the same as all other employees. All other owners remain subject to the owner-employee compensation rules.
- Nonpayroll costs eligible for forgiveness include business rent or lease costs. Prior to this IFR, there were no specific limits or exclusions for related party rent. The new IFR states that any ownership in common between the business and the property owner is a related party for these purposes. Rental payments to a related party are eligible for forgiveness as long as:
 - 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
 - The lease and mortgage were entered into prior to February 15, 2020.

The borrower must provide its lender with mortgage interest documentation to substantiate these payments.

- Nonpayroll costs eligible for forgiveness may not include amounts attributable to the business operation of a tenant or sub-tenant of the borrower. In the context of home-based businesses, household expenses are also not eligible. Examples are provided in the IFR to illustrate this rule.

Your professional service team at Miller, Cooper & Co., Ltd. is here to help you understand and navigate the ever-changing landscape of PPP forgiveness. Please contact a member of your service team for additional guidance and assistance.

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