

CALCULATING PPP LOAN FORGIVENESS

WHAT IF AN EMPLOYEE REFUSES
TO RETURN TO WORK?

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WHAT IF AN EMPLOYEE REFUSES TO RETURN TO WORK?

By: Kristy A. Fahland and Jeremy E. Warring

Question 6 from our [original FAQ post](#) asked: “What if my employees refuse to come back because they are making more through unemployment benefits?”

On May 3, 2020, the SBA updated its own [Paycheck Protection Program Frequently Asked Questions](#) file by addressing this question as it relates to forgiveness (see question 40). Under the new SBA guidance, the SBA and Treasury plan to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (*for the same salary/wages and the same number of hours*) from the CARES Act’s loan forgiveness reduction calculation.

The rule will require the borrower to have made a good faith offer *in writing*, and the employee’s rejection must be *documented* by the borrower. Based on the guidance alone, it appears this exception will only apply to eliminate reductions based on headcount and decreased wages. The exact question posed though, is: “Will a borrower’s loan forgiveness amount be reduced” in this situation? The answer is a flat No, followed by the qualifications provided above.

If interpreted more broadly, it is possible this guidance could apply to reduce the 75% threshold for total forgiveness, or provide that wages that would have been paid to individuals who refuse to return to work will still count towards payroll expenses for purposes of determining the total amount of forgiveness (i.e. 75% of the *forgiven amount* must be payroll expenses). Given that either of these interpretations could lead to forgiveness of funds not spent on covered expenses, they seem less likely.

For now, the important takeaway is that if you want to exclude these employees from calculating the reduction to your PPP Loan Forgiveness, however that exclusion applies, you need to make the offer in writing and properly document the employee’s rejection. The writing should be clear and concise, and include the position, the wages, the hours, and the start date or availability date of the position. If the employee responds verbally, the employer should respond in writing confirming the verbal conversation. All related documentation or employee responses should be kept in the employee’s personnel file.

As briefly discussed in our previous FAQ, this may affect an employee’s ability to receive unemployment compensation. The SBA guidance amplifies this concern by concluding with a warning that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

If you have questions or concerns about how this new guidance might impact your PPP Loan and forgiveness calculation, or want advice on how to properly document an employee’s rejection of employment, please contact our office today.

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