

SBA issues PPP guidance on laid-off employees who refuse to be rehired

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Businesses that received Paycheck Protection Program (PPP) loans can exclude laid-off employees from loan forgiveness reduction calculations if the employees turn down a written offer to be rehired, according to new guidance from the U.S. Small Business Administration

(SBA), which warned that employees who reject offers of reemployment may find themselves ineligible to continue receiving unemployment benefits.

The guidance was included among three new questions the SBA added over the weekend to a PPP [frequently asked questions \(FAQ\) file](#) it maintains in consultation with Treasury. The new guidance is included in FAQs 40–42. The first of the new questions asks if a borrower's PPP forgiveness amount would be reduced if the borrower lays off an employee and then offers to rehire the employee, but the employee declines the offer.

According to the guidance, SBA and Treasury plan to issue a new rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the loan forgiveness reduction calculation spelled out in the \$2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136, which authorized Treasury to create the PPP through the SBA's 7(a) lending system.

The interim final rule will specify that a borrower may exclude an employee from loan forgiveness calculations if the borrower made a good-faith, written offer of rehire and also documented the employee's rejection of that offer. The guidance does not specify what form that documentation should take.

Some employees have been turning down offers to be rehired for the same jobs for a variety of reasons, one of them being that they are making more money in unemployment benefits than they do in pay at their jobs because

the CARES Act temporarily provides an additional \$600 per week to people who have been approved by their state for unemployment insurance.

The new FAQ, however, warns that employees could be banned from receiving unemployment benefits if they turn down a reemployment offer.

"Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation," according to the guidance, which did not provide specifics on how that process might work.

The other two questions added to the FAQs addressed (1) whether seasonal employers must make all the required certifications on the Borrower Application Form if they elect to use an alternative 12-week base period as allowed under the interim final rule [issued April 27](#) and (2) whether not-for-profit hospitals exempt from taxation under Sec. 115 of the Internal Revenue Code qualify as "nonprofit organizations" under Section 1102 of the CARES Act.

The PPP so far

Congress established the PPP through the CARES Act, which was signed into law on March 27. The program is available to small businesses that were in operation on Feb. 15 with 500 or fewer employees, including not-for-profits, veterans' organizations, Tribal concerns, self-employed individuals, sole proprietorships, and independent contractors. Businesses with more than 500 employees in certain industries also can apply for loans, according to the SBA and Treasury.

SBA lenders were flooded with PPP applications from businesses in need of resources to help their businesses as the coronavirus pandemic and the consequences from social-distancing requirements devastated the economy. By April 16, the SBA had stopped accepting applications for the PPP after exhausting the initial \$349 billion in funding. Two weeks ago, Congress approved an additional \$370 billion in funding for small businesses, with \$310 billion in fresh funds provided for the PPP. The application window for the second round of PPP funding opened April 27.

The [AICPA's Paycheck Protection Program Resources page](#) houses resources and tools produced by the AICPA to help address the economic impact of the coronavirus.

For more news and reporting on the coronavirus and how CPAs can handle challenges related to the pandemic, visit the JofA's [coronavirus resources page](#).

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