

PUBLICATION

SBA Issues New Paycheck Protection Program Forgiveness Applications and Forgiveness Guidance

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As a result of the passage of the Paycheck Protection Program Flexibility Act (the "Flexibility Act"), the SBA has issued two new Forgiveness Applications and provided additional guidance on forgiveness under the Paycheck Protection Program (PPP). The Forgiveness Applications, instructions and other guidance are available on the US Treasury website and the SBA website. We previously discussed provisions of the Flexibility Act in an alert issued on June 5. The new Forgiveness Applications and additional guidance were expected due to the changes made by the Flexibility Act. Many borrowers will benefit from the new, streamlined Forgiveness Applications.

Unfortunately, the guidance also imposes limitations with respect to the amount that self-employed borrowers may claim as "replacement compensation." Additionally, guidance issued on June 12, 2020 may make the PPP available to borrowers who have been previously excluded by SBA regulations and the PPP.

Revisions to First, Third and Sixth Interim Final Rules

The Flexibility Act modified key provisions of the PPP with respect to loan term (new loans made after June 5 will have a five-year term instead of two years); amount required to be expended on eligible payroll costs (from 75 percent of the forgivable amount of the loan to 60 percent); extended the "covered period" for expenditure of loan proceeds for forgiveness purposes (from eight weeks to 24 weeks); and extended the safe harbor dates for restoration of number of full-time equivalent employees and wage reductions from June 30 to December 31, 2020. Accordingly, existing regulations and guidance from the SBA were modified on June 11 and June 17 to conform to the requirements of the Flexibility Act. Existing references to the covered period, maturity date, and deferral period for PPP loans, and the forgivable amount of qualified business expenses (other than payroll) were all changed to reflect the Flexibility Act requirements.

Further, the SBA responded to the new covered period for owner-employees, self-employed individuals and general partners. The compensation limit on PPP loan forgiveness for these individuals electing the original eight-week covered period is the *lesser* of \$15,385 or 8/52 of 2019 IRS Form 1040, Schedule C net profit amount. For borrowers utilizing the new 24-week covered period, compensation is limited to the *lesser* of \$20,833 or the 2.5-month equivalent of their 2019 IRS Form 1040, Schedule C net profit amount.

On June 12, 2020, the SBA also modified the regulations to allow individuals with criminal felony convictions to qualify for PPP loans. Convictions must be more than a year old and for anything other than a felony involving fraud, bribery, embezzlement or false statement in a loan application or an application for federal financial assistance.

New Applications for Forgiveness

The SBA revised the existing Forgiveness Application and added a new "EZ" Forgiveness Application form for a more streamlined and user-friendly process. The standard Forgiveness Application remains similar to the original application issued on May 15.

Forgiveness Application Form EZ

The EZ application dispenses with the requirements to provide significant information otherwise required by the standard Forgiveness Application, but may only be used by a borrower if:

- The borrower is self-employed, is an independent contractor or a sole proprietor who had no employees when the PPP loan application was submitted and did not include any employee salaries in the PPP loan calculations; or the borrower did not reduce:
 - Any employee's salary by more than 25 percent during the covered period (either the eight weeks or 24 weeks following the PPP loan disbursement) compared to the period between January 1, 2020 – March 31, 2020, and did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the covered period (excluding employees where were not rehired due to inability to rehire or who refused reemployment); or
 - Any employee's salary by more than 25 percent during the covered period compared to the period between January 1, 2020 – March 31, 2020 and the borrower was unable to operate during the covered period at the same level of business activity as before February 15, 2020 due to compliance with health and safety requirements issued between March 31, 2020 and December 31, 2020 by Health and Human Services, the CDC or OSHA related to COVID-19.

The instructions for both Forgiveness Applications identify the documents that must be submitted with the application as well as borrower record-keeping requirements.

Our team of attorneys and advisors continue to monitor these changes and will provide further updates about these matters. For additional information please contact one of the authors and visit the [Coronavirus \(COVID-19\): Navigating the Path Ahead](#) information page on our website.