



June 23, 2020

RE: SBA PPP Forgiveness update

The SBA, in consultation with the Treasury Department, released last Wednesday, June 17th, a revised loan forgiveness application for the Paycheck Protection Program (PPP). The SBA also established a new EZ application for forgiveness of PPP loans. Those details are provided below:

** However, an article was released on June 22nd that indicates US small businesses that received loans through the PPP are facing delays in finding out whether they will qualify for forgiveness on their loans, as banks say they need more guidance on which loans can be forgiven. Even though the SBA published updated forgiveness application forms last Wednesday, major US banks Chase, Bank of America, Wells Fargo, and PNC all stated that they are not yet able to take applications for loan forgiveness. Chase and Wells Fargo specifically noted that they were awaiting further clarification from the SBA. This continues to emphasize the complexity of the PPP loan forgiveness process and the need for continued guidance from the SBA. **

The applications reflect changes to the PPP made by the Paycheck Protection Flexibility Act of 2020, which became law June 5. The applications and instructions are available in the links below:

- [Revised PPP Loan Forgiveness Application](#) and [instructions](#)
- [EZ PPP Loan Forgiveness Application](#) and [instructions](#)

The releases last Wednesday came only hours after the SBA issued a new interim final rule providing guidance on how to calculate employee and owner compensation for loan forgiveness in the new 24-week covered period created by the Paycheck Protection Flexibility Act.

Congress passed the Paycheck Protection Flexibility Act to make it easier for small businesses and other PPP borrowers to qualify for full loan forgiveness. Among the changes in the act are the expansion of the “covered period” for loan forgiveness, which can be either 8 weeks or 24 weeks; as well as a reduction of the minimum that must be spent on payroll costs from 75% to 60%, and the establishment of a safe harbor for businesses that have been unable to return to the level of business activity they had before the COVID-19 pandemic due to compliance with health and safety guidelines for slowing the spread of the virus.

Application highlights

The revised PPP Loan Forgiveness Application and instructions include several notable items. Among them are:

- Health insurance costs for S corporation owners cannot be included when calculating payroll costs; however, retirement costs for S corporation owners are eligible costs.



- Safe harbors for excluding salary and hourly wage reductions and reductions in the number of employees (full-time equivalents) from loan forgiveness reductions can be applied as of the date the loan forgiveness application is submitted. Borrowers do not have to wait until Dec. 31st to apply for forgiveness to use the safe harbors.
- Borrowers that received loans before June 5 can choose between using the original eight-week covered period or the new 24-week covered period.

New EZ application details

The EZ PPP Loan Forgiveness Application requires fewer calculations and less documentation than the full application. The EZ application can only be used by borrowers that:

- Are self-employed and have no employees;
- Did not reduce the salaries or wages of their employees by more than 25% and did not reduce the number or hours of their employees; or
- Experienced reductions in business activity because of health directives related to COVID-19 and did not reduce the salaries or wages of their employees by more than 25%.

New interim final rule published

- The SBA issued rules Tuesday night for determining payroll costs and owner compensation in calculating PPP loan forgiveness under the new 24-week covered period.
- The Paycheck Protection Flexibility Act tripled the duration during which PPP recipients could spend the funds and still qualify for loan forgiveness — a span of time called the covered period. The [interim final rule](#) adjusts and adds to previous guidance for calculating loan forgiveness under the original eight-week covered period.
- The PPP allows loan forgiveness for payroll costs — including salary, wages, and tips — for up to \$100,000 annualized per employee, or \$15,385 per individual over the eight-week period. The new interim final rule establishes the 24-week maximum for full loan forgiveness at \$46,154 per individual.

Owner compensation replacement calculations

- While the employee compensation limit for the 24-week period is three times the eight-week limit, the interim final rule does not do the same with the owner compensation replacement for businesses that file Schedule C, *Profit or Loss From Business*, or Schedule F, *Profit or Loss From Farming*, tax returns. For those businesses, forgiveness for the owner compensation replacement is calculated for the eight-week period as $8 \div 52 \times 2019$ net profit, up to a maximum of \$15,385. For the 24-week period, the forgiveness calculation is limited to 2.5 months' worth ($2.5 \div 12$) of 2019 net profit, up to \$20,833.



- The owner compensation replacement calculations are structured to prevent owners from reaping PPP windfalls that Congress did not intend, according to the interim final rule. Specifically, the SBA and Treasury, which oversee the PPP, want to prevent the following scenario, which is made possible by a provision in the Paycheck Protection Flexibility Act that provides a safe harbor from loan forgiveness reductions to any borrower that is unable to return to the same level of business activity it was operating at before Feb. 15, 2020.

Other provisions

The interim final rule also modifies earlier guidance to account for changes included in the Payroll Protection Flexibility Act.

- The minimum term for PPP loans is raised to five years for all loans made on or after June 5. For loans made before June 5, the two-year minimum maturity remains in effect unless both the borrower and the lender agree to extend it to five years.
- The proportion of PPP funding that must be used on payroll costs to qualify for full forgiveness drops to 60% from 75%.
- The application deadline for PPP loans remains June 30, 2020.

IRS Guidance

The IRS has issued guidance on Coronavirus-related distributions and plan loans. The guidance presents the rules set out in Act Sec. 2202 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act ([P.L. 116-136](#)). It adds three new categories to the list of individuals who qualify due to adverse financial consequences. It provides analysis and examples repayments reporting. The guidance includes safe harbors for employee certification and the plan loan payment suspension period.

Background: Coronavirus-Distributions and Plan Loan Relief

The CARES Act provides that qualified individuals may treat as coronavirus-related distributions up to \$100,000 in distributions made from their eligible retirement plans (including IRAs) between January 1 and December 30, 2020. A coronavirus-related distribution is not subject to the 10 percent additional tax that otherwise generally applies to distributions made before an individual reaches age 59 ½. In addition, a coronavirus-related distribution can be included in income in equal installments over a three-year period, and an individual has three years to repay a coronavirus-related distribution to a plan or IRA and undo the tax consequences of the distribution.



New Categories of Qualified Individuals

The CARES Act authorizes the Treasury Department to add to this list of adverse financial consequences, these are the new additions:

- a reduction in pay (or self-employment income) due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19;
- the individual's spouse or a member of the individual's household being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19; or
- closing or reducing hours of a business owned or operated by the individual's spouse or a member of the individual's household due to COVID-19.

Here are a few websites for reference:

<https://www.sba.gov/funding-programs/disaster-assistance/coronavirus-covid-19>

<https://www.irs.gov/coronavirus/coronavirus-and-economic-impact-payments-resources-and-guidance>

<https://www.colorado.gov/pacific/cdle/covid-19/return-to-work>

<https://www.shrm.org/> (an inexpensive HR resource)

<https://www.federalregister.gov/documents/2020/06/19/2020-13293/business-loan-program-temporary-changes-paycheck-protection-program-revisions-to-the-third-and-sixth>