

Payroll Protection Program Updates

Program Extension

Earlier this week, Congress passed legislation that extends the application for Payroll Protection Program (PPP) Loans until August 8, 2020. So if you were considering applying and had not yet done so, there is approximately \$130 Billion still available in the program. As a reminder, any loan under \$2 Million is automatically considered qualified with regards to their being substantive doubt as to the economic conditions that your business faces. This means that the SBA cannot in any way qualify your forgiveness based on the actual financial circumstances of your business and industry.

Updated Interim Final Rules

Updated Paycheck Protection Program (PPP) guidance released Monday June 22, 2020 that declares that PPP recipients can apply for loan forgiveness early but that doing so could cost them money.

While this is certainly good news for some companies it may be advantageous for companies with smaller loans (e.g. less than \$150,000) to wait and see if a blanket exemption is provided which does not require the submission of the application for forgiveness and the supporting documentation. We will keep you updated with any news on the possibility of a blanket exemptions for smaller loans. In the meantime, you should consider the guidance outlined below.

Specifically, the new interim final rule makes revisions to previous guidance to reflect the [Paycheck Protection Program Flexibility Act of 2020](#), P.L. 116-142, which became law on June 5, 2020 and made significant changes to the PPP, most notably:

- Expanding to 24 weeks, from eight weeks, the covered period during which PPP loan recipients can spend the funds and still qualify for loan forgiveness. The 24-week period applies to all loans made on or after June 5. Borrowers that received loans before June 5 can choose to elect an eight-week period.
- Lowering to 60% from 75% the proportion of PPP funding that must be used on payroll costs to qualify for full forgiveness.
- Expanding the term for new loans to five years from two years. Borrowers with loans received before June 5 can extend their loan term to five years if their lender agrees.

Early loan forgiveness applications

Many small businesses have inquired about whether they can apply for PPP loan forgiveness before their covered period expires. The new interim final rule says that if a borrower applies for loan forgiveness before the end of the covered period and has reduced any employees' salaries or wages by more than the 25% allowed for full forgiveness, the borrower must account for the excess salary reduction for the full eight-week or 24-week covered period, whichever one applies to its loan.

Under that guidance, PPP borrowers that apply early for loan forgiveness forfeit a safe-harbor provision allowing them to restore salaries or wages by Dec. 31 and avoid reductions in the loan forgiveness they receive. For example, if a borrower has a 24-week period that ends in November but wants to apply in September, any wage reduction in excess of 25% as of September would be calculated for the entire 24-week period even if the borrower restores salaries by Dec. 31.

Other interim final rule provisions

The interim final rule clarifies that it is the borrower's responsibility to provide an accurate calculation of the loan forgiveness amount. Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents, but lenders do not have to independently verify the borrower's reported information provided that the borrower:

- Supplies documentation supporting its request, and
- Attests that it has accurately verified the payments for eligible costs.

The IFR reinforces previous guidance that the SBA will deduct Economic Injury Disaster Loan (EIDL) Advance Amounts from PPP forgiveness amounts. It also reiterates previous guidance, including:

- Employer health insurance contributions for S corporation owners cannot be included when calculating payroll costs; however, employer retirement contributions for S corporation owners are eligible costs.
- For owner-employees and self-employed individuals, including those who file Schedule C, *Profit or Loss From Business*, or Schedule F, *Profit or Loss From Farming*, forgiveness for owner compensation is calculated for the eight-week period as $8 \div 52 \times 2019$ compensation, up to a maximum of \$15,385, in total for all businesses. For the 24-week period, the forgiveness calculation is limited to 2.5 months' worth ($2.5 \div 12$) of 2019 compensation, up to \$20,833, also in total for all businesses.

Simplified Application for Loan Forgiveness

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

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

New EZ application details

The EZ PPP Loan Forgiveness Application requires fewer calculations and less documentation than the full application. The EZ application can 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 as a result of health directives related to COVID-19 and did not reduce the salaries or wages of their employees by more than 25%.

As always, we will continue to keep you updated on any and all changes and modifications to this program as they are announced and guidance is available.

Thank you and have a great 4th of July Holiday weekend!

~ Seth

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