



PPP Forgiveness Loan Application Best Practices

IFA WEBINAR SERIES

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Forgiveness Overview

- Eligible Expenses:
 - Payroll (60%)
 - Certain Benefits—Health Insurance, Retirement etc.
 - Nonpayroll
 - Rent, Utilities, Interest on covered mortgages

Forgiveness Overview

- Reductions
 - Reduction in FTEs from Reference Period
 - Reduction in wages or salaries greater than 25%

What's New with the PPP Program

- Paycheck Protection Program Flexibility Act of 2020—June 2020
- Summer 2020—Release and Creation of 3508S (\$50K and Less Application)
- A few additional FAQs
- Procedural Notice on PPP Loans & Changes in Ownership

Highlights and Clarifications

- Creation of a New Safe Harbor Based upon Federal COVID-19 Compliance for FTE Reductions
- Maximum “Owner-Employee” compensation capped at \$15,385 for an 8 week election or \$20,833 for the 24 week election (if election is allowed—pre 6/5)
- Maximum employee compensation cap for the 24 week period of \$46,154

Highlights and Clarifications (con't)

- \$50,000 or Less Application—Simplified application, only document submission to the lender with retention for Fed.
- Procedural rule on changes in ownership:
 - a. At least 20% of the common stock is sold or transferred
 - b. Borrower sells 50% of the FMV of their assets
- Limitation on related party rent—limited to the amount of mortgage interest paid during the period.

Highlights and Clarifications (con't)

Refresher on compensation and non-cash limits

Cash compensation limits

Compensation limit depends on owner-employee status:

- Defined in Aug. 4 FAQs as “an owner who is also an employee.”
- Clarified in Aug. 24 IFR that for **S- & C-Corps, 5% ownership** is the threshold for being an owner-employee.

Payroll caps for loan forgiveness based on covered period

	8 weeks	24 weeks
Non-owner employees	15,385	46,154
Owner-employees	15,385	20,833

Treatment of non-cash compensation for owners

	Eligible?		
	Health ins.	Retirement	State & local taxes (3)
Self-employed (Schedule C/F)	no	no	no
General Partner	no	no	no
S corp owner-employee	no (1)	yes (2)	yes
Family members of 2% S corp owner (4)	no (1)	yes	yes
C corp owner-employee	yes	yes (2)	yes

(1) S corp owner-employee and family members health insurance would have been included in 2019 W-2.
 (2) Retirement capped a 2.5/12 of 2019 contribution.
 (3) Taxes assessed on compensation.
 (4) Family attribution rules of 26 U.S.C. 318 apply - generally spouse, children, grandchildren, parents

New EZ PPP Application

On June 16, 2020, the SBA released a revised PPP loan forgiveness application, a new EZ PPP loan forgiveness application, and revisions to the third and sixth interim final rules in response to the passage of the PPP Flexibility Act signed into law on June 5, 2020. These recent changes are likely to impact your company's approach to loan forgiveness and are important changes to the program. Attached is copy of the forgiveness loan applications and latest interim final rule. In summary the following is an outline of changes for your consideration:

- 1. New EZ PPP application for those who meet any one of the following criteria:**
 - a. Borrower is self-employed, independent contractor, or sole proprietor that had no employees at the time of the PPP loan application.
 - b. Borrower did not reduce annual wages or salaries of any employee by more than 25% during the covered period or alternative payroll covered period as compared to Q1 2020 AND the borrower did not reduce the number of employees and the average paid hours of employees between 1/1/20 and the end of the covered period (ignoring reductions from the inability to rehire individuals and reductions in hours offered to be restored and refused).
 - c. Borrower did not reduce annual wages or salaries of any employee by more than 25% during the covered period or alternative payroll covered period as compared to Q1 2020 AND the borrower was unable to operate during the Covered period at the same level of business activity as before 2/15/20 due to compliance with requirements established or guidance issued between 3/1/20 and 12/31/20 by the Secretary of HHS, Director of the CDC, or OSHA, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirements related to COVID-19.

Revisions to the Forgiveness Application

2. Revisions to PPP Loan Forgiveness Application:

- a. Addition of a second safe harbor on the reduction of forgiveness related to the reduction of FTEs if the borrower was unable to operate during the Covered period at the same level of business activity as before 2/15/20 due to compliance with requirements established or guidance issued between 3/1/20 and 12/31/20 by the Secretary of HHS, Director of the CDC, or OSHA, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirements related to COVID-19.
- b. Includes the model to walk through the calculation of forgiveness inclusive of the newly revised 60% payroll cost requirement.
- c. Limits owner employee, self-employed, or general partner compensation to \$20,833 or 2.5 months of the owner's 2019 compensation if electing the 24 week forgiveness covered period or \$15,385 for those electing the 8 week period.

Payroll Provider Report Problems

1. **Calculation of FTEs—gross hours basis**
 1. Simplified method problems
 2. Hours for terminated employees
2. **Health insurance costs—must be less employee portions**
3. **Safe harbor calculations and support—not included on reports**
4. **Identification of owners on payroll reports with special limits**
5. **Capping the gross payroll costs allowed**

Tax Concerns

IRS Notice 2020-32 provides a reminder that the IRC does not allow for a deduction of the amount of expenses that are allocable to tax exempt income.

IRS Revenue Ruling 20-27 and Revenue Procedure 20-51 issued in October reiterated 2020-32

What does this mean for year-end planning and forgiveness?

SBA PPP Loan Reviews

- **SBA has statutory authority to conduct investigations to determine whether a 7(a) borrower or lender, including a PPP participant, is ineligible for a loan, or has violated program requirements**
- **Per SBA Regulations, SBA has discretion to review any PPP loan of any size at any time**
- **What will SBA review a PPP loan for?**
 - **Borrower Eligibility, including whether loan necessary “to support the ongoing operations” of the borrower**
 - **Loan Amount and Use of Proceeds**
 - **Loan Forgiveness Amounts**

SBA PPP Loan Review

What types of reviews are being undertaken?

- **SBA's Office of the Inspector General is investigating PPP loans based on its receipt of information that raises concerns, including referrals from 3rd parties**
 - **In addition, SBA is reviewing loans as part of the Forgiveness Application Review Process**
- ...

SBA PPP Loan Review

How does a borrower find out that its PPP loan is being reviewed by SBA?

- **PPP lender servicing the loan will generally be the point of contact between SBA and the borrower**
- **Typically, SBA will contact the PPP lender of record requesting that it provide additional information**
 - **Lender will then contact PPP borrower**
 - **Borrower response also will be through lender to SBA**

Loan Review as Part of Forgiveness Process

What loans are being reviewed?

- **As noted, SBA can review any loan of any size, BUT –**
- **SBA has announced that it will review “for loan necessity” ALL PPP loans where the borrower, together with any affiliate(s), received loan(s) of \$2 million or greater**

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Loan Review as Part of Forgiveness Process

- **Borrowers meeting the loan size threshold must complete a Loan Necessity Questionnaire and submit it, and required supporting documents, to the lender servicing the PPP loan**
 - **For-profit entities = SBA Form 3509**
 - **Non-profit entities = SBA Form 3510**
- **Information provided in the Questionnaire “*will inform SBA’s review of those Borrowers’ good-faith certification, as required by the CARES Act, that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations” of the Borrower*”**
- **SBA’s request that a borrower complete the Questionnaire “*does not mean that SBA is challenging that certification*”**

Loan Review as Part of Forgiveness Process

What timeframes apply?

- Lender has 5 business days after SBA provides notice it that it is conducting a loan review to –
 - Notify borrower of the review and request completion of appropriate questionnaire .AND
 - Provide to SBA additional information requested of it –
 - PPP Application and supporting documentation, Forgiveness Application and supporting documentation (e.g. payroll information), transcript of account, copy of loan note, other documents as requested by SBA.
- Borrower has 10 business days after lender notifies it of loan review to provide additional information requested by SBA through the lender
- Lender has 5 additional business days to submit borrower-provided documents to SBA

Loan Review as Part of Forgiveness Process

What about reviews of loans below the \$2 million threshold?

- **As part of its overall responsibility to prevent fraud, waste and abuse, SBA also expected to review a sample of loans below the \$2 million threshold**
- **SBA will notify PPP lenders regarding reviews of PPP loans other than reviews of loan necessity (e.g., all reviews of loans under \$2 million)**
- **Notification letters will list documents that borrowers or lenders must provide to SBA [Loan Necessity Questionnaire NOT required]**
 - **Lenders transmit required documents to SBA via the PPP Loan Forgiveness Platform**

Loan Review as Part of Forgiveness Process

What happens if a PPP borrower receives an adverse decision from SBA?

- **PPP loan will NOT be forgiven and the borrower will be responsible for repaying the lender in full for the outstanding loan balance with payments beginning immediately**

[Note: SBA has not provided guidance yet regarding lender servicing requirements for PPP loans that are not fully forgiven]

Loan Review as Part of Forgiveness Process

What appeal rights does a PPP borrower have?

- Appeals to SBA's Office of Hearings and Appeals (OHA) are authorized after SBA completes a review of a PPP loan that finds the borrower –
 - (1) Was ineligible for the loan
 - (2) Was ineligible for the PPP loan amount received or used the PPP loan proceeds for unauthorized purposes
 - (3) Is ineligible for PPP loan forgiveness in the amount determined by the lender in its full or partial approval decision issued to SBA, and/or
 - (4) Is ineligible for PPP loan forgiveness in any amount if lender issued a full denial decision to SBA
- Borrower (through its lender) also may request that SBA review a lender decision to deny forgiveness in full – that review will be conducted internally and is NOT eligible for appeal to OHA

Loan Review as Part of Forgiveness Process

So, what should PPP borrowers be doing now?

- **Verify that business records contain all of the information that SBA expects borrowers to submit to SBA or to retain in its files**
- **Retain all back-up documentation**
- **Respond timely to any requests for documentation or information made by your lender or SBA**
- **When appropriate, reach out to the professionals used to support the business on an ongoing basis – attorney, CPA, etc.**
 - **Those professionals are working very hard to understand PPP eligibility and forgiveness requirements and to stay up-to-date on any changes to program guidelines**

Forgiveness / Loan Review Authorities

Paycheck Protection Program authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), public law 116-136 (enacted 3/27/2020)

- **Implemented by the Department of Treasury and SBA through 25 regulatory amendments (Interim Final Rules/IFRs), frequently asked questions (FAQs), SBA Notices, Forms, etc.**

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Forgiveness / Loan Review Authorities

[Most implementing documents available on Treasury.gov and SBA.gov websites]

Interim Final Rules (additional references also found in other IFRs):

#14 – PPP Requirements – Loan Forgiveness (posted 5/22/2020 – Fed Reg 6/2/2020)

15 – PPP SBA Loan Review Procedures and Related Borrower and Lender Responsibilities (posted 5/22/2020 – Fed Reg 6/1/2020)

20 – Revisions to Loan Forgiveness IFR and SBA Loan Review Procedures IFR (posted 6/22/2020, Fed Reg 6/26/2020)

#23 – Appeals of SBA Loan Review Decisions Under the PPP (posted 8/22/2020, Fed Reg 8/27/2020)

#25 – Additional Revisions to Loan Forgiveness and Loan Review Procedures IFRs (posted 10/8/2020, Fed Reg 10/19/2020)

Forgiveness / Loan Review Authorities

SBA Forms:

- **3508EZ* (+ instructions) – *EZ Forgiveness Application*** (for use by borrowers meeting criteria discussed earlier and as specified in accompanying instructions)
- **3508S* (+ instructions) – *Short form Forgiveness Application*** (for borrowers that received a PPP loan of \$50,000 or less and, together with any affiliates did not receive PPP loans totaling \$2 million or more)
- **3508* (+ instructions) – *Forgiveness Application*** (for borrowers that do not meet criteria for using either 3508EZ or 3508S)
- **3509* – *Necessity Questionnaire (For Profit Businesses)***
- **3510* – *Necessity Questionnaire (Non-Profit Businesses)***

*** All forms recently updated to extend expiration date from 10/31/2020 to 12/31/2020 / SBA Forms 3509 and 3510 not on Treasury/SBA websites, but available to registered lenders via SBA PPP Loan Forgiveness Platform**

Forgiveness / Loan Review Authorities

Frequently Asked Questions:

- ***Frequently Asked Questions [general] (originally issued 4/3/2020 and most recently updated on 10/7/2020)***
- ***Frequently Asked Question on Loan Forgiveness (originally issued 8/4/2020 and most recently updated on 10/13/2020)***

SBA Notices:

- ***# 5000-20038, Procedures for Lender Submission of Paycheck Protection Program Loan Forgiveness Decisions to SBA and SBA Forgiveness Loan Reviews (effective 7/23/2020)***
- ***# 5000-20057, Paycheck Protection Program Loans and Changes of Ownership (effective 10/2/2020)***

Questions?

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Thank you for attending!