
LEGAL UPDATES AND NEWS

The SBA's Paycheck Protection Program Extended; Updated Interim Final Rule on Loan Forgiveness

On July 4, 2020, the Paycheck Protection Program Extension Act was signed into law, which extended the deadline to apply for a loan under the U.S. Small Business Administration's ("SBA") Paycheck Protection Program ("PPP") from June 30, 2020 to August 8, 2020. The SBA has an estimated \$130 billion remaining in the PPP.

The SBA also recently issued an interim final rule (the "Interim Final Rule"), which amends the SBA's previously issued interim final rules on PPP loan forgiveness to incorporate certain provisions of the Paycheck Protection Program Flexibility Act of 2020 (the "PPP Flexibility Act") signed into law on June 5, 2020. Below is a summary of the changes to the loan forgiveness requirements of the PPP implemented by the Interim Final Rule.

1. Loan Forgiveness Process

The timeframe for the loan forgiveness application process remains the same. However, the Interim Final Rule provides the following modifications:

- Certain borrowers, including self-employed individuals, independent contractors and other eligible borrowers, may use a new streamlined version of the loan forgiveness application form (SBA Form 3508EZ, available [here](#)) to apply for loan forgiveness. Other borrowers must use the original version of the loan forgiveness application form (SBA Form 3508, available [here](#)).
- If the SBA declares the full amount of the borrower's PPP loan forgivable and remits the full amount of the loan to the lender, the lender must mark the PPP loan note as "paid in full," which must be reported as such on the next monthly SBA Form 1502 report filed by the lender.
- A borrower may notify the lender that it is requesting the SBA to review the lender's decision to deny the borrower's loan forgiveness application. The lender must notify the SBA of the borrower's request for review within five days of receipt of the notice.

2. Deferral Period and Forgiveness

The PPP Flexibility Act provides that if the borrower does not apply for loan forgiveness within 10 months after the "loan forgiveness covered period," the PPP loan is no longer deferred and the borrower must begin paying principal and interest. The loan forgiveness covered period begins on the date the PPP loan is disbursed to the borrower and ends on the date that is 24 weeks after disbursement date or, if earlier, December 31, 2020. Alternatively, a borrower that received a PPP loan before June 5, 2020 may elect for the loan forgiveness covered period to end eight weeks after the disbursement date of the PPP loan. The Interim Final Rule clarifies that, in either case, the borrower may elect for the loan forgiveness covered period to commence on the first day of the first payroll cycle in the loan forgiveness covered period rather than the disbursement date of the PPP loan.

The Interim Final Rule also clarifies that a borrower may submit a loan forgiveness application any time on or before the maturity date of the PPP loan – including before the end of the loan forgiveness

covered period – if the borrower has used all of the loan proceeds for which forgiveness is being requested. If the borrower does not request loan forgiveness within 10 months after the loan forgiveness covered period, or if the SBA determines that the loan is not eligible for forgiveness (in whole or in part), the PPP loan is no longer deferred and borrower must begin paying principal and interest. The lender must then notify the borrower of the date the first loan payment is due and report that the PPP loan is no longer deferred to the SBA on the next monthly SBA Form 1502 filed by the lender.

3. Payroll Costs Eligible for Loan Forgiveness

The actual amount of the PPP loan that is forgiven will depend, in part, on the total amount of payroll costs and qualifying non-payroll costs incurred by the borrower over the loan forgiveness covered period. To receive full loan forgiveness, a borrower must use at least 60% of the PPP loan for payroll costs, and not more than 40% of the loan forgiveness amount may be attributable to qualifying non-payroll costs.

The Interim Final Rule specifies that the amount of loan forgiveness that may be requested for an owner or self-employed individual’s payroll compensation is capped as follows: (1) eight weeks’ worth of 2019 compensation or \$15,385, whichever is less, in total across all businesses for an eight-week loan forgiveness covered period; or (2) 2.5 months’ worth of 2019 compensation or \$20,833, whichever is less, in total across all businesses for a 24-week loan forgiveness covered period. The SBA explained that these limitations were imposed to prevent an owner from receiving a windfall that could occur if the owner laid off an employee and availed himself or herself of the exemptions related to reductions in business activity that would enable an owner to treat the entire PPP loan as payroll, with the entire amount forgiven. For example, without these limitations, a borrower with one employee could receive a maximum loan amount equal to five months of payroll (2.5 months of payroll for the owner, plus 2.5 months of payroll for the employee). If the employee was laid-off due to circumstances under the PPP that would not reduce the loan forgiveness amount, the owner would receive a windfall of an additional 2.5 months of compensation.

4. Reductions to Loan Forgiveness Amount

The loan forgiveness amount will be reduced if there is either a reduction of full-time equivalent (“FTE”) employees or salary or wages during the loan forgiveness covered period, unless such reductions are restored by December 31, 2020. For purposes of calculating the amount of salary or wage reductions, the Interim Final Rule requires that borrowers who elect to apply for forgiveness prior to the end of their loan forgiveness covered period must account for any salary or wage reductions in effect for the full 24-week or eight-week period, as applicable.

The PPP Flexibility Act added two statutory exemptions, which would allow borrowers who do not fully restore their workforce to receive their full loan forgiveness amount if it can be documented in good faith that they are: (1) unable to rehire individuals who were employees on February 15, 2020 and/or hire similarly qualified employees for unfilled positions by December 31, 2020; or (2) unable to return to the same level of business activity as existed before February 15, 2020 due to compliance with COVID-19 federal safety guidelines imposed by federal agencies. Because many borrowers have closed or reduced their business activities due to state or local health orders that are based on, and not directly related to, COVID-19 federal safety guidelines, the Interim Final Rule clarifies that the SBA will interpret the statutory exemption for workforce reductions to include reductions that occur as a result of the borrower’s “direct or indirect” compliance with COVID-19 federal safety guidelines.

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