



There have been ongoing developments from the Small Business Administration (SBA) about the Paycheck Protection Program that are important for anyone who has borrowed money under that program and is either seeking or will seek forgiveness:

New, Simpler Forgiveness Applications

Late last week, the SBA and the Department of the Treasury released a **revised [PPP loan forgiveness application](#)**, which has been shortened from 11 pages to five (instructions can be found [here](#)).

Required documentation for Forgiveness Applications includes a PPP Schedule A, which is attached to the loan forgiveness application, and supplemental borrower-provided documentation verifying payroll and nonpayroll costs and full-time equivalent employees (FTEEs). The borrower is required to list information about employee compensation and FTEEs' hours to determine whether there will be any reductions in the loan forgiveness amount. Typical documentation for verifying a borrower's payroll and nonpayroll costs and FTEEs would consist of bank accounts, payment receipts, payroll tax filings reported to the IRS, lease agreements, utility invoices and copies of lender amortization schedules.

Voluntary documentation includes what is called a PPP Borrower Demographic Information Form. The form requests information about each of a borrower's principals to collect data on veteran status, gender, race and ethnicity for PPP reporting purposes.

In addition, they released a new EZ version of the forgiveness application, [Form 3850EZ](#), which is intended to be used by borrowers who (i) are self-employed and have no employees; or (ii) 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 (iii) 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%. Instructions can be seen [here](#). There are fewer calculations to determine loan forgiveness amounts and less documentation required for those borrowers using the EZ version of the loan forgiveness application, in addition to making certain representations and certifications.

In the event of an audit, all documentation identified in the loan forgiveness application instructions and all records relating to a borrower's PPP loan must be maintained in a borrower's files for at least six years after the date the loan is forgiven or repaid in full.

Loan Forgiveness Changes due to the PPP Flexibility Act

Some additional guidance has also been given about some of the ways that loan forgiveness might be reduced:

PAYROLL 60% THRESHOLD

One of the most important changes to the rules, due to the recent passage of PPP Flex, is the reduction in the percentage that must be spent on payroll costs (which also include health care costs and retirement plan contributions paid by the employer). Previously that standard was 75% of the loan amount, but that has been reduced to 60%. Other guidance issued has established that the 60% level is

not a cliff for forgiveness (meaning that if you spent 59%, then forgiveness would not be possible) but rather will have a proportionate reduction in the forgiveness amount. In an example, the SBA considers a situation in which a borrower receives a \$100,000 loan and spends \$54,000 on payroll costs. The SBA concludes that the borrower in that example would be limited to \$90,000 of loan forgiveness (with the \$54,000 of payroll costs representing 60% of \$90,000).

FTE FORGIVENESS REDUCTION EXCEPTIONS

The revised forgiveness application expands the forgiveness reduction exceptions (which already included the ability to exclude any employees who were fired for cause, voluntarily resigned, or voluntarily requested and received a reduction in hours) to also exclude any positions for which the employer made a good-faith written offer to restore any reduction in hours during the covered period that was rejected by the employee if that employee was working prior to February 15, 2020. But there's a catch: the employer must be "unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020." That means that if you excluded someone who rejected the return to work, you can only exclude that person from the FTE calculation if you could not fill the position. If the borrower could have replaced the person, then that employee must remain in the FTE calculation.

FTE REDUCTION SAFE HARBORS

Consistent with the CARES Act and the PPP Flexibility Act, the PPP loan forgiveness application also provides two safe harbors related to FTE reductions. Compliance with either safe harbor eliminates any decrease in loan forgiveness based upon a reduction in FTE levels (but does not protect against potential reductions due to reductions in salary/hourly rate).

"Due to COVID-19" Safe Harbor

This new safe harbor was added following the language of the PPP Flexibility Act, exempting the borrowers from a reduction in forgiveness if the Borrower, in good faith, is able to document that it was "unable to operate between February 15, 2020, and the end of the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020, by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19." This exemption is one of the paths to using the new EZ Forgiveness Application.

But what is "good faith" for the purpose of this exemption? It's not clear but the intent is clear – the borrower should be able to back it up with documentation supporting the certification that it was unable to operate at the same level of business activity as before February 15, 2020 due to COVID-19. And it also includes this "warning" for borrowers claiming this exemption: "This documentation must include copies of the applicable requirements for each borrower location and relevant borrower financial records."

"Restoration" Safe Harbor

A borrower is similarly exempt from the reduction in loan forgiveness based upon a reduction in FTE employees if both: (a) the borrower reduced its FTE employee levels in the period between February 15, 2020, and ending April 26, 2020, and (b) the borrower then restored its FTE employee levels by no later than December 31, 2020 to its FTE employee levels in the Borrower's pay period that included February 15, 2020.

INCREASE IN AMOUNT ALLOWED TO BE INCLUDED IN PAYROLL COSTS FOR 24-WEEK LOAN PERIODS

In a move that was expected, but didn't translate as cleanly for owners as expected, the amount of compensation that can be included increased to 24-week loan periods for employees. Under the original rules, borrowers using an eight-week covered period were capped on counting salaries and wages that exceed \$15,385 per individual employee toward the amount subject to loan forgiveness. With the longer 24-week covered period, this amount is capped at \$46,154. However compensation paid to owners (including owner-employees, a self-employed individual or general partners) qualifies for forgiveness up to eight weeks' worth (8/52) of 2019 net profit (capped at \$15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of 2019 net profit (capped at \$20,833) for a 24-week covered period.

Remember that the rules clarify that salary, wages or commissions paid to a furloughed employee qualify as payroll costs, as do such any hazard pay and bonuses paid to an employee as long as it does not increase the employee's total compensation to more than \$100,000 annually.

SBA to Release Info on PPP Borrowers

Last week, the SBA and Treasury said it will release information about borrowers in the coming weeks. The SBA said they would publicly disclose the names of recipients of the taxpayer-funded loans, the amounts they received in ranges, as well as demographic data on the businesses for loans that exceeded \$150,000. Information on loans of less than \$150,000 will only be disclosed in total by industry, business type and demographic category. In addition, business owners' personally identifiable information, such as a home address associated with the loan, will be withheld. This was a departure from the announcement the prior week by the Secretary of the Treasury that they would not release any data to the public.

Business Expenses Forgiven under PPP are not Business Expenses for Tax Deduction Purposes

While the PPP loan program has already noted that amounts forgiven would not count as taxable income to the borrower, a question has remained unclear as to Business Expense Deduction Impact. As recently as April, the IRS ruled that tax deductions for wages and rent paid with forgivable PPP loans were not allowed as a "double dip" and therefore cannot be deducted as business expenses -- and have just reiterated that position still applies for borrowers. So while a for-profit employer might normally claim a business expense deduction for employee wages, health care costs and rents, to the extent that those expenses were a part of the PPP loan forgiveness, the employer cannot also claim those specific amounts as a reduction in their overall income for 2020.