

June 19, 2020

SBA New Loan Forgiveness Applications Released, More Guidance on Paycheck Protection Program Flexibility Act

Human Resources & Employment

This week, the SBA released new guidance surrounding the ever-changing Paycheck Protection Program (PPP). [As we recently wrote about](#), on June 5, 2020, borrowers received welcome news, as the PPP Flexibility Act lengthened the amount of time for borrowers to use loan proceeds from 8 to 24 weeks, reduced the amount of the loan required to be tied to payroll from 75% to 60% in order to achieve maximum forgiveness, increased the amount of time an employer must restore FTE count and salaries, and expanded the safe harbor for the same.

The SBA's updates to the third and sixth interim final rules provide clarity on some of these changes. Borrowers who either opt into a covered period of 24 weeks, or (in the case of borrowers who secured loans on or after June 5, 2020, are automatically given a 24-week covered period), will be able to provide more payroll per employee. Following the Flexibility Act's tripling of the covered period's term, the Final Rule confirms that payroll costs including salary, wages, and tips, up to \$100,000 of annualized pay per employee, may be provided for the equivalent of 24 weeks, for a maximum of \$46,154 per employee. Covered benefits, including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums), are included for employees, but not for the owners.

The update also addresses the differentiation between owners and employees in the calculation of forgivable payroll costs. Owners are accounted for separately, and are subject to different caps, depending on whether they are in an 8 or 24 week covered period:

"The Administrator, in consultation with the Secretary, has determined that it is appropriate to limit the forgiveness of owner compensation replacement for individuals with self-employment income who file a Schedule C or F to either eight weeks' worth (8/52) of 2019 net profit (up to \$15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of 2019 net profit (up to \$20,833) for a 24-week covered period per owner in total across all businesses."

The SBA states that this is in keeping with the "structure of the CARES Act and its overarching focus on keeping workers paid, and will prevent windfalls that Congress did not intend."

Revised Application, New "EZ" Version

In addition to offering guidance (and promising more in the future), the SBA also issued a [revised forgiveness application](#) and an "[EZ version](#)" for borrowers that:

- are self-employed and have no employees; or
- 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%.

Happily, the EZ application is a two page document, with fewer calculations and less documentation. Borrowers who may qualify to take advantage of this streamlined process should review the list of certifications on page 2 of the application to ensure that they qualify.

Forgiveness Based on a Term Shorter than 24 Weeks

As we reported earlier, borrowers need not meet the 60/40 ratio of payroll to non payroll expenses in order to receive any forgiveness; rather, forgiveness will merely be reduced. In recent days, borrowers have questioned whether the same flexibility can be found in the FTE count where they have spent their PPP loan proceeds in less than 24 weeks. Do they have to wait until the end of the 24 week covered period to apply for forgiveness, or otherwise report their FTE count at the end of their 24 week mark? While the Interim Final Rule is far from clear on the issue, I wrote to Patrick Piorkowski, Lender Relations Specialist at the SBA's Illinois District Office. Piorkowski responded: "You can elect to apply for forgiveness at the point in time you believe you qualify. You do not need to wait for 24 weeks." We anticipate that this question will be covered in future guidance.

EIDL Loans Available Once Again to Non-Agricultural Businesses

Finally, since last month, all but agricultural businesses have been prevented from applying for Economic Injury Disaster Loans (EIDL). [The SBA announced this](#) week that it is processing those EIDL applications submitted to its site prior to April 15, 2020, and also reaffirmed that small businesses may once again apply for the EIDL advance of up to \$1,000 per employee (including independent contractors and gig workers) – an advance that does not need to be repaid, whether your loan is approved or not. Unlike the PPP, which (as of now) will only receive applications through June 30, 2020, the EIDL program will run through December 31, 2020.