

SBA Releases Revised PPP Loan Forgiveness Applications

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The Small Business Administration (SBA) has released an updated Loan Forgiveness Application and instructions to incorporate the revisions to the Paycheck Protection Program (PPP) pursuant to the recently enacted Paycheck Protection Program Flexibility Act. There is also a new Form 3508EZ for qualified applicants.

Updated Loan Forgiveness Application

The Loan Forgiveness Application was revised to reflect the changes in dates and amounts provided for in the Flexibility Act and related rules:

- The Covered Period can be extended to a 24-week period in addition to the prior 8-week period, but not beyond December 31, 2020.
- The application reflects the new December 31, 2020 date to rehire employees. The borrower may still count employees that refused to return to work after an offer to rehire, but the borrower must now also document an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.
- The borrower can also claim a safe harbor from rehiring employees if the borrower is able to document that it was unable to operate at the same level of business activity during the Covered Period as before February 15, 2020 due to compliance with COVID-19 safety requirements.
- The application reflects the reduction in amount required to be expended on payroll costs from 75 percent to 60 percent of the loan, and now provides for loan forgiveness based on the smallest of the following three calculations:
 - The amount of the PPP loan
 - A reduced amount accounting for fewer FTEs and reduction in wages greater than 25%

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- The actual payroll costs during the Covered Period divided by 0.60

For example, if the PPP loan was for \$200,000, and only \$100,000 was used for payroll costs during the applicable 8-week or 24-week period after disbursement, the \$100,000 divided by 0.60 would equal \$166,666 and the \$166,666 could be forgiven if all employees are re-hired by December 31. If all employees are not re-hired there may be a further reduction in the loan forgiveness amount

Simplified Application for Qualified Borrowers

The new Form 3508EZ loan forgiveness application is a simplified form for three types of borrowers:

1. Self-employed individuals, independent contractors, and sole proprietors with no employees,
2. Borrowers who did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period compared to the first three months of 2020 and who did not reduce the number of employees. The borrower does not need to include (i) reductions in employees that the borrower offered to rehire and borrower was unable to hire similarly qualified employees by December 31, 2020, or (ii) reductions in employees' hours that the borrower offered to restore and the employee refused, or
3. Borrowers who did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period and were unable to operate during the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with COVID-19 safety requirements.

Form 3508EZ is limited to these specific instances and all other borrowers must complete the regular form.

Both application forms still have the separate box to disclose loans exceeding \$2 million, which confirms that the SBA's scrutiny will be focused on those larger loans. Nevertheless, every loan remains subject to SBA review. Borrowers should carefully review the certifications provided in the application.

We will continue to monitor the PPP regulations and guidance documents and provide updates as they arise. Please contact the author of this Alert, **Steven Firkser** sfirkser@greenbaumlaw.com | 732.476.2388 with questions. Mr. Firkser is a member of the firm's **Real Estate** and **Redevelopment & Land Use** Departments.