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OBSERVATIONS

CARES Act –REVISED FORGIVENESS APPLICATION

July 1, 2020

On June 17, the U.S. Small Business Administration (SBA), in consultation with the Treasury Department, released a revised loan forgiveness application for the Paycheck Protection Program (PPP). The SBA also unveiled a new EZ application for forgiveness of PPP loans.

The applications reflect changes to the PPP made by the Paycheck Protection Flexibility Act of 2020, P.L. 116-142, which became law June 5 (see prior blogs on this Act).

On Monday June 22, 2020 a 34-page interim final rule (IFR) was released which addresses a number of issues related to the PPP. Specifically, the new interim final rule makes revisions to previous guidance to reflect the Paycheck Protection Program Flexibility Act of 2020 (see prior blog).

When can I file the application for forgiveness?

Many small businesses have inquired about whether they can apply for PPP loan forgiveness before their covered period expires. The new interim final rule says that if a borrower applies for loan forgiveness before the end of the covered period and has reduced any employees' salaries or wages by more than the 25% allowed for full forgiveness, the borrower must account for the excess salary reduction for the full eight-week or 24-week covered period, whichever one applies to its loan.

Under that guidance, PPP borrowers that apply early for loan forgiveness forfeit a safe-harbor provision allowing them to restore salaries or wages by Dec. 31 and avoid reductions in the loan forgiveness they receive. For example, if a borrower has a 24-week period that ends in November but wants to apply in September, any wage reduction in excess of 25% as of September would be calculated for the entire 24-week period even if the borrower restores salaries by Dec. 31.[1]

[1] https://www.journalofaccountancy.com/news/2020/jun/ppp-loan-recipients-can-apply-early-for-loan-forgiveness.html?utm_source=mnl:cpald&utm_medium=email&utm_campaign=24Jun2020

Given this, if employers are at reduced staff or wage levels, they will want to weigh the value of filing the application early versus holding off on expectations that staff/wage levels will increase prior to December 31.

Borrowers should reach out to their lender to ascertain if the lender has their own forgiveness application and when it will be available.

Below are other main points associated with the new application and the most recent guidance. [2]

- Health insurance costs for S corporation owners cannot be included when calculating payroll costs; however, retirement costs for S corporation owners are eligible costs. (see details below)
- Safe harbors for excluding salary and hourly wage reductions and reductions in the number of employees (full-time equivalents) from loan forgiveness reductions can be applied as of the date the loan forgiveness application is submitted. Borrowers don't have to wait until Dec. 31 to apply for forgiveness to use the FTE safe harbor
- Borrowers that received loans before June 5 can choose between using the original eight-week covered period or the new 24-week covered period.

The EZ PPP Loan Forgiveness Application requires fewer calculations and less documentation than the full application. The EZ application can be used by borrowers that:

- Are self-employed and have no employees;
- 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%.

The SBA issued rules June 16 for determining payroll costs and owner compensation in calculating PPP loan forgiveness under the new 24-week covered period.

- The Paycheck Protection Flexibility Act tripled the duration during which PPP recipients could spend the funds and still qualify for loan forgiveness — a span of time called the covered period. The interim final rule adjusts and adds to previous guidance for calculating loan forgiveness under the original eight-week covered period.
- The PPP allows loan forgiveness for payroll costs — including salary, wages, and tips — for up to $100,000 annualized per employee, or $15,385 per individual over the eight-week period. The new interim final rule establishes the 24-week maximum for full loan forgiveness at $46,154 per individual.

[2] https://www.journalofaccountancy.com/news/2020/jun/ppp-loan-forgiveness-applications.html

Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation? Yes

For borrowers that received a PPP loan before June 5, 2020 and elect to use an eight-week covered period, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at eight weeks' worth (8/52) of 2019 compensation (i.e., approximately 15.38 percent of 2019 compensation) or $15,385 per individual, whichever is less, in total across all businesses.

If electing to use the 24 week period or loan was received after June 5, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at 2.5 months' worth (2.5/12) of 2019 compensation (i.e., approximately 20.83 percent of 2019 compensation) or $20,833 per individual, whichever is less, in total across all businesses.

In particular, C-corporation owner-employees are capped by the amount of their 2019 employee cash compensation (up to a maximum of $20,833) **and** employer retirement **and** health insurance contributions made on their behalf.

S-corporation owner-employees are capped by the amount of their 2019 employee cash compensation (up to a maximum of $20,833) and employer retirement contributions made on their behalf, but employer health insurance contributions made on their behalf cannot be separately (this is because those payments presumably would be included in their compensation).

Schedule C or F filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit up to a maximum of $20,833.

General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235 up to a maximum of $20,833.

For self-employed individuals, including Schedule C or F filers and general partners, retirement and health insurance contributions are included in their net self-employment income and therefore cannot be separately added to their payroll calculation.[3]

The interim final rule also modifies earlier guidance to account for changes included in the Payroll Protection Flexibility Act.

- The minimum term for PPP loans is raised to five years for all loans made on or after June 5. For loans made before June 5, the two-year minimum maturity remains in effect unless both the borrower and the lender agree to extend it to five years.

[3] SBA Interim Guidance Issued June 22, 2020 – Pg 13-14

- The proportion of PPP funding that must be used on payroll costs to qualify for full forgiveness drops to 60% from 75%.
- The application deadline for PPP loans remains June 30.[4]

Businesses should review and consider these changes and determine what may work best in their situation. Also, as the rules and regulations are continually being updated and altered, we encourage business owners to try and stay current on the updates in the regulations and legislation.

We will provide subsequent blogs as information becomes available and for businesses to utilize as they maneuver through this ever-changing landscape.

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[4] https://www.journalofaccountancy.com/news/2020/jun/ppp-loan-forgiveness-applications.html