

SBA Issues Further Revisions to PPP Rules and Revised Forgiveness Application

Posted on June 23, 2020

Last week, the Small Business Administration (“SBA”) and the Treasury Department issued an interim final rule revising the regulations on forgiveness of Paycheck Protection Program (“PPP”) loans, in light of the Paycheck Protection Program Flexibility Act (“PPP Flexibility Act”), H.R. 7010 being signed into law. The SBA also revised its application for forgiveness and released a simplified version of the application for certain eligible small businesses to use. The PPP Flexibility Act made several changes to the SBA’s PPP loan program in order to make it easier for businesses to use provided funds and to receive forgiveness, including extending the period of time that a small business may use the loan funds and easing the restrictions on how those funds may be spent.

A. Revisions to Regulations on Forgiveness

Last week’s revisions to the SBA’s interim rules – much like the revisions previously released – largely modify the existing regulations to bring them in line with the changes made by the PPP Flexibility Act. Of note, the revised regulations address the amount an employer can spend on high-earning employee wages and still receive forgiveness. Under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), payroll costs per employee were capped at up to \$100,000 of annualized pay. Because PPP loans could only be used for eight (8) weeks originally, the SBA had capped the amount that an individual employee could be paid from PPP proceeds at \$15,385, or the equivalent of 8 weeks of a \$100,000 annualized pay divided out on a weekly basis. After the PPP Flexibility Act expanded the covered period from 8 weeks to twenty-four (24) weeks, there remained an open question about whether the SBA would increase the salary cap to account for the increased time period.

The new revisions answer that question, stating that for the 24-week covered period **an employer can receive forgiveness for up to \$46,154 per employee – the equivalent of 24 weeks of an annualized \$100,000 salary.**

B. Revised Forgiveness Applications

Additionally, this week the SBA issued a revised standard PPP Forgiveness Application (instructions for filling out the form can be found [here](#)) and a new “EZ” PPP Forgiveness Application (instructions for filling out the form can be found [here](#)). While the revised standard application mostly streamlines the original form, the EZ application allows certain eligible employers to use a form that requires fewer calculations. A borrower is eligible to use the simplified, “EZ” form if it meets one of the following:

- The borrower is a self-employed individual, independent contractor, or sole proprietor who does not have other employees;
- The borrower is a business that did not reduce employee salaries or wages or its number of employees during the Covered Period of the loan; or
- The borrower is a business that was unable to operate at the same level of business activity as before February 15, 2020 due to compliance with health requirements issued by the Department of Health and Human Services (“HHS”), the Centers for Disease Control and Prevention (“CDC”) or the Occupational Safety and Health Administration (“OSHA”), and did not reduce FTE employees or wages by more than 25% during the time period from January 1, 2020 and March 31, 2020.

While the new applications and the revisions to the regulations have provided additional answers related to the PPP forgiveness process, many other questions still remain, including how SBA will ultimately define “owner-employees” and additional guidance on what portions of their compensation are eligible for forgiveness; what specifically falls under the category of covered utilities, and whether a borrower using the 24-week Covered Period can apply for forgiveness prior to the full 24 weeks.

Additional guidance from the SBA is expected in the near future. Accordingly, businesses should check for updates from the SBA as SBA continues to address the outstanding questions raised by the passage of the PPP Flexibility Act.

Should you have any questions about the changes to the PPP loan program or about the new applications, please contact Nathan Duggins at nduggins@tuggleduggins.com or (336) 271-5246, Mike Wenig at atmwenig@tuggleduggins.com or (336) 271-5216, Ross Hamilton at rhamilton@tuggleduggins.com or (336) 271-5279, Scott Gayle at atsgayle@tuggleduggins.com or (336) 271-5232, or Daniel Stratton at dstratton@tuggleduggins.com or (336) 271-5240. Please also follow our Twitter account @TuggleDuggins at <https://twitter.com/TuggleDuggins> for continuing, up-to-date information related to navigating the law during the COVID-19 outbreak.

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