



FINEMARK
NATIONAL BANK & TRUST

Applying for PPP Loan Forgiveness:

What Borrowers Need to Know

Tuesday, October 6, 2020
12-1 p.m. ET



Introduction: PPP Background

- The Paycheck Protection Program (“**PPP**”) offered low-interest, forgivable loans to most businesses with 500 or fewer employees to help them weather the economic disruption caused by COVID-19
- Businesses were eligible to borrow up to the lesser of:
 - 2.5x their average monthly payroll, or
 - \$10 million
- PPP loan proceeds could only be used for payroll, mortgage interest, rent, and utilities
- The Small Business Administration (“**SBA**”) initially required borrowers to spend at least 75% of their PPP loan proceeds on payroll costs – later reduced to 60%
- To qualify for forgiveness, PPP loan proceeds had to be used within an 8-week covered period – later extended to 24 weeks
- Amounts that were not forgiven were required to be repaid within 2 years – later extended to 5 years for certain loans

Introduction: PPP Background

- The terms of the PPP have changed significantly since it was enacted in March 2020
- Among other things:
 - The “Covered Period” was expanded from 8 weeks to 24 weeks, but borrowers who were assigned a loan number by the SBA on or before June 5, 2020 may elect an 8-week Covered Period
 - The amount that may be spent on non-payroll costs increased from 25% to 40%
 - The repayment term increased from 2 years to 5 years for loans originated on or after June 5, 2020 (for loans originated earlier, borrower and lender may jointly agree to increase the term to 5 years)
 - The SBA announced it will review all loans in excess of \$2 million following the lender’s submission of the borrower’s loan forgiveness request

When to Apply for Loan Forgiveness

- There is no deadline to apply for PPP loan forgiveness
- If a borrower has not applied for forgiveness within **10 months** after the last day of its Covered Period, the borrower must begin making interest and principal payments to the lender
- Pending legislation would streamline the forgiveness process for forgiveness requests of \$150,000 or less, which account for 86% of PPP loans but only 27% of PPP loan dollars
- The SBA's loan forgiveness portal is open, but some banks still are not accepting loan forgiveness applications
- As of September 30, 2020, approximately 96,000 loan forgiveness requests – representing just 2% of the 5.2 million PPP loans – had been filed, according to the Wall Street Journal

When to Apply for Loan Forgiveness

- Why are borrowers waiting to apply?
 - The SBA has already published 25 Interim Final Rules, and may publish more in coming days
 - Congress could still make changes to the PPP
 - The tax treatment of PPP loan proceeds remains subject to change
- There is no disadvantage to delaying PPP loan forgiveness requests, and there may be advantages, including:
 - Borrowers who wait until after the end of their 24-week Covered Period may be able to calculate the number of their full-time-equivalent (“**FTE**”) employees and the amount of any salary reductions with greater certainty
 - Borrowers who reduced headcount, FTE employees, or employees’ salaries or hourly wages during the Covered Period may prefer to wait to see whether the reductions can be reversed on or before December 31, 2020
- But some borrowers may want or need immediate confirmation their loans will be forgiven

How to Apply for Loan Forgiveness

- The SBA has released two distinct PPP Loan Forgiveness Applications
 - SBA Form 3508, and
 - SBA Form 3508EZ
- The “EZ” form is shorter and easier to complete than the regular Loan Forgiveness Application
- The “EZ” form uses different time periods to compare employee headcount, average FTE employees, and reductions in employees’ salaries or hourly wages
 - The statute gives borrowers the option to compare their Covered Period FTE to one of two periods: February 15-June 30, 2019 or January 1-February 29, 2020
 - The Form 3508EZ generally has borrowers compare their Covered Period headcount, average FTE, and salary wages to Q1 2020
- Some banks may use their own forms, which are similar if not identical to the official SBA forms

How to Apply for Loan Forgiveness

Who May Use Form 3508EZ?

1. Self-employed individuals, independent contractors, or sole proprietors who had no employees; or
2. Borrowers who did not reduce salaries or wages of certain employees by more than 25% during the covered period, compared to the period between January 1 and March 31, 2020; and

Either

- Did not reduce the number of employees or the average paid hours of employees between January 1, 2020, and the end of the covered period (excluding reductions due to an inability to rehire individuals who were employed on February 15, 2020, and reductions in employee hours that the borrower offered to restore), or
- Were unable to operate during the covered period at the same level of business activity as before February 15, 2020, due to compliance with requirements or guidance issued between March 1 and December 31, 2020, by HHS, the CDC, or OSHA (or a state or local shelter-in-place or similar order)

How to Apply for Loan Forgiveness

What information is required to complete Form 3508EZ?

- Number of employees (i) at time of loan application and (ii) at time of forgiveness application
- Payroll costs
 - Payroll costs are capped at \$100,000 per employee, pro rated for the 8- or 24-week covered period (i.e., \$15,385 for 8 weeks or \$46,154 for 24 weeks)
 - Non-cash compensation – including the employer's share of state and local taxes, contributions to employee health and retirement plans, and certain other benefits – may be eligible for forgiveness in addition to the per-employee cap
 - Different cash and noncash compensation limits apply to owners, including general partners, LLC members, and greater-than-5% owners of C and S corporations
- Business mortgage interest payments
- Business rent or lease payments
- Business utility payments

How to Apply for Loan Forgiveness

What information must be submitted with Form 3508EZ?

- Payroll
 - Documents verifying eligible cash compensation and non-cash benefit payments paid during the Covered Period (or Alternative Payroll Covered Period), including
 - Bank account statements or payroll provider reports
 - Tax forms (e.g., Forms 940 and 941)
 - Proof of employer contributions to employee health insurance and retirement plans
- Nonpayroll
 - Documents verifying existence of obligations/service before February 15, 2020, and eligible payments during the covered period of
 - Business mortgage interest
 - Business rent or lease payments
 - Business utility payments

How to Apply for Loan Forgiveness

What Information Must the Borrower Retain (But Not Submit)?

- Documentation supporting the certification that salaries or wages were not reduced by more than 25% during the Covered Period, relative to the first quarter of 2020
- Documentation regarding job offers and refusals, refusals to accept restoration of a reduction in hours, voluntary resignations, for-cause terminations, written requests for reduced hours, and inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020
- Documentation supporting the certification, if applicable, that the borrower did not reduce the number or the average paid hours of employees between January 1, 2020, and the end of its Covered Period
- Documentation supporting the certification, if applicable, that the borrower was unable to operate between February 15, 2020, and the end of its Covered Period at the same level of business activity as before February 15, 2020, due to compliance with federal (and state/local) rules and guidance related to COVID-19
- All records related to the borrower's PPP loan

How to Apply for Loan Forgiveness

What information must be submitted with Form 3508?

- Generally, the same information that is required to submit Form 3508EZ, plus
 - PPP Schedule A, which requires a detailed calculation of the borrower's payroll costs, average FTE, and any reductions in salaries or hourly wages during its Covered Period, compared to, at the borrower's election, February 15-June 30, 2019 or January 1-February 29, 2020

How to Apply for Loan Forgiveness

What Information Must the Borrower Retain (But Not Submit)?

- PPP Schedule A worksheet, plus
 - Documentation supporting each employee listed in Schedule A, Worksheet Table 1
 - Documentation supporting each employee listed in Schedule A, Worksheet Table 2 (including documentation that each listed employee received compensation at an annualized rate of more than \$100,000 during at least one pay period in 2019)
 - Documentation regarding job offers and refusals, for-cause terminations, voluntary resignations, written requests for reduced work schedules, and any inability to hire qualified employees for unfilled positions on or before December 31, 2020
 - Documentation supporting the certification, if applicable, that the borrower was unable to operate between February 15, 2020, and the end of its Covered Period at the same level of business activity as before February 15, 2020, due to compliance with federal (and state/local) rules and guidance related to COVID-19
 - Documentation supporting FTE Reduction Safe Harbor 2 (relating to reductions in FTE employees between February 15 and April 26, 2020, that were restored on or before December 31, 2020)

Tax Treatment of PPP Loan Forgiveness

- Although Congress purported to make PPP loan forgiveness tax-free, the IRS issued a ruling that prevents borrowers from deducting otherwise-deductible business expenses paid using PPP funds that are forgiven
- The IRS ruling might not apply to the extent forgiven PPP loan proceeds are attributable to compensation paid to sole proprietors, partners and members of limited liability companies taxed as partnerships
- Bills have been proposed in Congress to reverse the IRS ruling, but none of them has yet been enacted
- It is not clear how to file tax return for 2020 if forgiveness does not occur until 2021
- Hopefully, forgiveness will occur prior to the due date for the 2020 return. However, if Congress overrules the IRS, or the IRS reverses itself, the timing of forgiveness will not be an issue

Questions?

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