



On June 16, 2020, the Small Business Administration (SBA) released an updated Paycheck Protection Program (PPP) [Loan Forgiveness Application](#) and [Instructions](#), as well as a new PPP [Loan Forgiveness Application Form 3508EZ](#) (EZ Application) and [Instructions](#), to reflect recent amendments to the PPP made by the PPP Flexibility Act. For a comprehensive summary of the PPP Flexibility Act, please click [here](#).

On June 17, 2020, the SBA issued a new [Interim Final Rule](#), which revises (i) the Interim Final Rule on Additional Eligibility Criteria and Requirements for Certain Pledges of Loans (referred to as the Third Interim Final Rule), which was published in the Federal Register on April 20, 2020 and (ii) the Interim Final Rule on Disbursements (referred to as the Sixth Interim Final Rule), which was published in the Federal Register on May 4, 2020. The new applications and guidance clarify what portion of PPP loan proceeds can be spent on owner and employee compensation and subsequently forgiven, depending on whether a borrower has elected an 8 or 24-week covered period, and they simplify the loan forgiveness application process.

NEW INTERIM FINAL RULE

The new [Interim Final Rule](#) sets forth new caps on owner and employee compensation for borrowers that extend their covered period to 24 weeks. Before the PPP Flexibility Act gave borrowers the option to extend their covered period to 24 weeks, the maximum amount that could be spent on cash compensation (meaning salary, wages and tips) and be forgiven was \$15,385 per person, regardless of whether the compensated individual was an employee or owner. Following the passage of the PPP Flexibility Act, questions arose over whether the cap on cash compensation would be ratably increased to adjust for the longer time period covered.

For borrowers that elect to retain the original 8-week covered period, the maximum amount that can be spent on cash compensation and be forgiven remains \$15,385 per person, regardless of whether the individual is an employee or owner.

For each individual employee, the total amount of cash compensation eligible for loan forgiveness may not exceed an annualized salary of \$100,000, prorated for the covered period. If the 24-week covered period is elected, the amount that can be spent on employee compensation and be forgiven is capped at \$46,154 per individual. For employees (but not owners), this amount is increased for covered benefits, such as health care expenses, retirement contributions and unemployment insurance premiums.

The amount of owner compensation (e.g., individuals with self-employment income who file a Schedule C or F) that is subject to forgiveness is capped at \$20,833 (the 2.5-month equivalent of \$100,000 per year) for each individual, if the 24-week covered period is elected. Unlike employee compensation, this amount does not include covered benefits, such as health care expenses, retirement contributions and unemployment insurance premiums. It also excludes any qualified sick leave equivalent amount for which a credit is claimed under Section 7002 of the Families First Coronavirus Response Act (FFCRA) or any qualified family leave equivalent amount for which a credit is claimed under Section 7004 of FFCRA.

EZ LOAN FORGIVENESS APPLICATION

The [PPP EZ Application](#) requires fewer calculations and less documentation and thus provides a streamlined application process for borrowers qualified to use it. PPP borrowers are eligible to use the EZ Application if they satisfy any one of the following:

(continued on next page)

- i. the borrower is a self-employed individual, independent contractor or sole proprietor and had no employees at the time of its PPP loan application and did not include any employee salaries in the computation of average monthly payroll in its application for a PPP loan; or
- ii. the borrower did not reduce the annual salary or hourly wages of any employee (other than High Earners, as defined below) by more than 25% during the covered period selected by the borrower, as compared to the period between January 1, 2020 and March 31, 2020, and the borrower 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 (ignoring employee reductions arising from the inability to rehire individuals who were employees on February 15, 2020 if the borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020 and ignoring reductions in an employee's hours due to employees who declined the borrower's offer to restore their hours); or
- iii. the borrower did not reduce the annual salary or hourly wages of any employee (other than High Earners) by more than 25% during the covered period selected by the borrower, as compared to the period between January 1, 2020 and March 31, 2020, and the borrower was unable to operate at the same level of business activity as it did before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or costumer safety requirement related to COVID-19.

For purposes of the above calculations, "High Earners" means employees who received during any single period in 2019, wages or salary at an annualized rate of more than \$100,000.

Borrowers that fall within one of the three categories above are expected to have a relatively quick and easy loan forgiveness application process ahead of them. Borrowers who do not qualify for the EZ Application must use the standard Loan Forgiveness Application, which has been simplified compared to its prior version.

STANDARD LOAN FORGIVENESS APPLICATION

The standard PPP [Loan Forgiveness Application](#) has been reduced to 5 pages (in its original form, it was 11 pages). Among other changes, the standard Loan Forgiveness Application now addresses the borrower's option to elect the original 8-week covered period or the extended 24-week covered period, sets forth the revised caps on owner and employee compensation based on the covered period selected by the borrower and incorporates the additional safe harbors provided by the PPP Flexibility Act. The [instructions](#) to the standard Loan Forgiveness Application have also been revised to include clarifying edits and helpful tips.

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