

PPP LOAN UPDATES

A LOT HAS CHANGED IN THE LAST MONTH...

PPP FLEXIBILITY ACT

- Expanded covered period to 24 weeks (if your loan was funded before June 5th, you can elect to use the original 8-week period)
- 75% payroll test is now a 60% test (not a cliff test)
- Additional FTE reduction exceptions:
 - Borrower unable to rehire individuals who were employees on February 15, 2020, and hire similarly qualified employees for unfilled positions by December 31, 2020; or
 - Borrower unable to return to the same level of business activity as the business was operating at before February 15, 2020, due to compliance with sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19 imposed by specified federal agencies during the period beginning on March 1, 2020, and ending December 31, 2020
- 5 year repayment on new loans (and previous loans if both parties consent – need bank approval).
- Taxpayers may qualify for payroll tax deferral even if they've received PPP loan forgiveness.

FLEXIBILITY ACT CONTINUED...

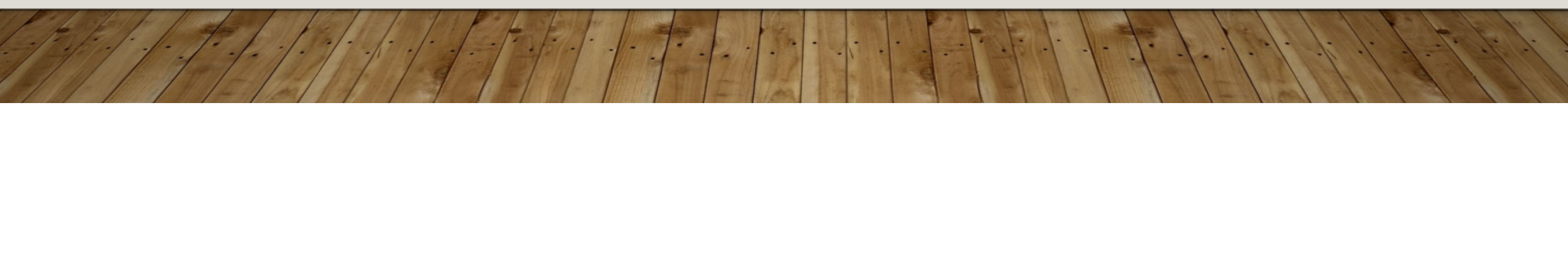
- Payment deferral (was 6 months) – submit the loan forgiveness application within 10 months AFTER the end of your loan forgiveness covered period, then no payments due before the date on which SBA remits the loan forgiveness amount on your loan (or notifies your lender of no loan forgiveness)

NEW LOAN FORGIVENESS APPLICATION – FORM 3508EZ

Eligible users:

- Self-employed with no employees
- Employers that did NOT:
 - Reduce compensation for any sub \$100,000 employees* more than 25% during the covered period; AND
 - One of the following:
 - Reduce FTEs from 1/1/20 through the covered period; OR
 - Was unable to operate during the covered period at 2/15/20 levels due to COVID-19 restrictions issued by certain listed federal agencies

* Sub \$100,000 employee is any employee who did not receive more than \$100,000 annualized compensation during any pay period in 2019 (Weekly comp of \$1,923+, bi weekly of \$3,846+, semi monthly of \$4,167+, monthly of \$8,333+)



UPDATED LOAN FORGIVENESS – FORM 3508

- Very similar to original application with minor adjustments to conform to Flexibility Act
- Instructions also similar with a few noted differences:
 - Clarification on owner compensation and benefits
 - Updated FTE safe harbors
 - Per employee compensation cap for the 24-week covered period is increased to \$46,154 ($24 \div 52 \times \$100,000$) plus covered benefits such as health care, retirement contributions, and state payroll taxes (if using 8-week period, cap is still \$15,385).

OWNER COMPENSATION

- Owner compensation is capped at \$20,833 or 2.5 mo equivalent of their applicable 2019 compensation, whichever is lower.
 - If electing 8 week covered period, this amount is capped at \$15,385 or 8-week equivalent of 2019 comp if lower.
 - Cap on owner compensation is across all businesses in total
- Health insurance benefits for self-employed individuals, general partners or owner-employees of S-corp owners are not included in allowable health insurance costs.
- Retirement benefits for self-employed individuals or general partners are not included in allowable retirement benefit costs (S-corp owners are ok)

FTE EXCEPTIONS

1. Good faith offer declined by individual who was an employee on 2/15/20 and unable to hire similarly qualified employee before 12/31/20
2. Good faith offer to restore hours & wages declined by individual who was an employee (employee choice to reduce hours)
3. Employees fired for cause, voluntarily resigned or voluntarily reduced hours during covered period

DOCUMENTATION REQUIRED!

FTE REDUCTION SAFE HARBORS

1. Unable to operate between 2/15/20 and the end of the covered period at the same level of business activity as before 2/15/20 due to compliance with requirements established or issued by certain listed agencies; OR
2. If FTEs were reduced between 2/15/20 and 4/26/20 and restored to 2/15/20 levels no later than 12/31/20 (was 6/30/20)

DOCUMENTATION REQUIRED!

UNRESOLVED ISSUES

- Incurred and/or Paid – still inconsistent and unclear. If using the 24-week covered period with no problems of fully utilizing the funds, we recommend playing it safe and including payrolls that are both incurred and paid within your covered period (with the clear exception of the last payroll). There may be good reason to use a more aggressive approach, but understand the possible risk in doing so.
- ~~What if you fully utilize the loan proceeds before the 24-week period is up, can I apply early?~~ Updated 6/22/20 – You can apply before the end of the covered period if you have used all of the loan proceeds for which you are requesting forgiveness. If you apply for forgiveness before the end of the covered period and reduced any employee salaries or wages in excess of 25%, you must account for the excess salary reduction for the full 8-week or 24-week period.
- What qualifies as transportation?

PREVIOUSLY CLARIFIED ISSUES


- Bonuses and hazard pay are qualified compensation
- FTEs calculated based on a 40 hr work week OR use 1.0 FTE for anyone working 40+ hr/wk and 0.5 FTE for anyone working less than 40hr/wk
- Salary reduction test is on a per employee basis, not in the aggregate.
 - Only relevant for employees who earned \$100k or less annualized for ALL pay periods in 2019 (*each payroll paid in 2019 must be evaluated*)
 - Compare Q-I earnings to earnings within the covered period
 - Salary reduction is based on salary or hourly rate (with no regard to total hours)

DOCUMENTATION REQUIREMENTS

- Regardless of which form is used, the same documentation is required
 - Proof of FTE tests and compensation tests
 - Support for payroll costs
 - Support for all other costs
- Documentation regarding any exceptions or safe harbors utilized
- 6 year retention
- Loans under \$2million are not exempt from an SBA examination

TAX PLANNING CONSIDERATIONS

- The portion of the loan that is forgiven is not taxable income – great!
- CAUTION – the corresponding expenses paid with the forgiven debt are NOT deductible.
- What does this mean? They net to \$0, or in other words – remove that portion of expenses from your total expenses/budget.
- Example – Contractor receives \$200k in loan forgiveness. \$150k was for direct labor (i.e. revenue producing labor) and \$50k for operating labor and expenses. Contractor billed \$350k for that labor:

Revenue:	\$350,000		\$350,000
Direct labor:	<u>- 150,000</u>		<u>0</u>
Gross Profit:	200,000		350,000
Oper. Expenses:	<u>- 100,000</u>		<u>- 50,000</u>
Taxable Profit:	\$100,000		300,000

QUESTIONS?

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<https://politoepich.com/covid19-resources>

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