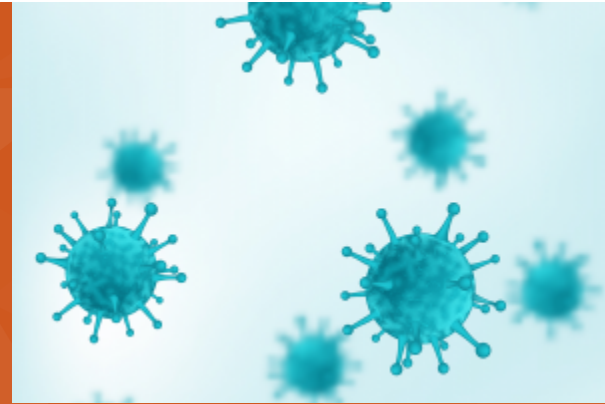


COVID-19 Alert: PPP Forgiveness Application

PPP Application Period Ends; Treasury Department Releases Revised Forgiveness Application Forms and Revises Regulatory Standards Related to PPP Loan Forgiveness

By: Matthew L. Mitchell and Scott R. Bleier
June 30, 2020



June 30, 2020 marked the last day that a small business may apply for a COVID-19 relief loan under the Payroll Protection Program (“PPP”). [Note: Since the publication of this alert, Congress extended the application deadline for the PPP program to August 8, 2020.]

In the run-up to this deadline, the Treasury department has issued a series of regulations and forms that govern PPP “Forgiveness Criteria” – the conditions that a PPP loan recipient must meet to be relieved from the obligation to repay the loan. These regulations and forms, the key concepts of which are outlined below, implement the recently passed *Payroll Protection Program Flexibility Act* (the “Act”), and redefine and ease certain Forgiveness Criteria in favor of PPP loan recipients:

NEW FORGIVENESS APPLICATION

On June 16, 2020, the Treasury Department updated its PPP form template database to include:

- A “Long Form” *PPP Loan Forgiveness Application* – The standard form that a PPP loan recipient must submit to its lender as a precondition to loan forgiveness.
- An “EZ FORM” *PPP Loan Forgiveness Application* – A streamlined forgiveness application that may be used by PPP loan recipients that are either: self-employed individuals; independent contractors; sole proprietors; or business entities that did not reduce employee wages or headcount during the Covered Period of the loan.

Both the Long Form and EZ Form incorporate the new Forgiveness Criteria mandated by the Act and replace a version of the forgiveness application that had been released prior to the passage of the Act.

PPP loan recipients should coordinate with their lenders to determine and complete the appropriate forgiveness form.

FORGIVENESS MECHANICS CLARIFIED

On June 17, 2020 and June 22, 2020, the Treasury Department issued revised sets of PPP regulations (the “Revised Regulations”) – the Revisions to the Third and Sixth Interim Final Rules and Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules – that clarify and implement the Act’s new Forgiveness Criteria. Specifically, the Revised Regulations instruct that, for purposes of calculating PPP loan forgiveness:

- **THE 24-WEEK COVERED PERIOD:** Consistent with the Act, the Revised Regulations confirm that the “Covered Period” for the PPP loan is extended from 8-weeks to 24-weeks from the date on which the loan proceeds were disbursed. However, if a PPP loan was made *before* June 5, 2020, the loan recipient may elect to remain on an 8-week Covered Period schedule and may apply for forgiveness as soon as that 8-week period concludes.
- **THE 60 PERCENT FLOOR:** The Revised Regulations confirm the Act’s mandate that at least 60 percent of the PPP loan proceeds must be used for payroll costs (in its original form, the Act had this payroll cost threshold at 70% of PPP loan proceeds). The Revised Regulation refer to this concept as the “60 percent floor,” indicating that if a PPP loan recipient uses less than 60 percent of the loan amount for payroll costs during the applicable Covered Period, the PPP loan recipient will continue to be eligible for partial loan forgiveness, subject to at least 60 percent of the *loan forgiveness amount* having been used for payroll costs.
- **THE FORGIVENESS CAP:** A core concept of the PPP is the “Forgiveness Cap” – a limit on how much an employer may pay an individual employee from PPP proceeds during the Covered Period, and still receive loan forgiveness. Pre-Act PPP regulations set that Forgiveness Cap at \$15,385 (*a \$100,000 salary rate annualized to the 8-week Covered Period that governed prior to the Act*). The Revised Regulations harmonize the Forgiveness Cap with the Act’s new 24-week Covered Period allowance. Specifically, the Revised Regulations instruct that the Forgiveness Cap for a PPP loan recipient that elects the 24-week Covered Period is **\$46,154** (*a \$100,000 salary rate annualized to a 24-week Covered Period*). A PPP loan recipient that elects the 8-week Covered Period schedule remains bound by the \$15,385 Forgiveness Cap.
- **SPECIAL FORGIVENESS CAP FOR OWNERS:** The Revised Regulations include a special Forgiveness Cap for owner-employees, self-employees, and general partners (the “Owner Forgiveness Cap”). For a PPP loan recipient that elects a 24-week Covered Period, the Owner Forgiveness Cap is \$20,833 (*\$100,000 at a 2.5-month annualized rate*). For a PPP loan recipient that elects the 8-week Covered Period, the Owner Forgiveness Cap is limited to \$15,835 (*\$100,000 at an 8-week annualized rate*).
- **WHEN TO APPLY FOR FORGIVENESS:** Under the Revised Regulations, a PPP loan recipient may submit a loan forgiveness application any time on or before the maturity date of the loan – *including before the end of the covered period* – if the PPP loan recipient has used all of the loan proceeds for which the PPP loan recipient is requesting forgiveness. If the PPP loan recipient applies for forgiveness before the end of the covered period and has reduced any employee’s salaries or wages in excess of 25 percent, the PPP loan recipient “must account for the excess salary reduction” for the full 24-week or 8-week Covered Period, whichever is applicable. As such, if a PPP loan recipient has a 24-week period that ends in November but wants to apply for forgiveness in September, any wage reduction in excess of 25% as of September would be calculated through November for purposes of determining a reduction in forgiveness amount. Finally, if the PPP loan recipient does not apply for loan forgiveness within 10 months after the last day of the covered period, or if the SBA determines that the loan is not eligible for forgiveness (in whole or in part), repayment of the PPP loan is no longer deferred and the PPP loan recipient must begin repaying principal and interest.
- **EXTENSION OF LOAN MATURITY DATE:** In the event that the PPP loan, or portion of the loan, is not subject to forgiveness, the Revised Regulations confirm that the maturity term for a PPP loan, made *on or after* June 5, 2020, is 5 years. The Revised regulations also instruct that the maturity term for a PPP loan, made *before* June 5, 2020, is 2 years, “*unless the borrower and lender mutually agree to extend the maturity of such loans to five years.*” For a borrower wishing to repay a PPP loan earlier than mandated by the terms of the loan, there are no pre-payment penalties.

It is critical that PPP loan recipients that intend to apply for forgiveness understand the concepts

contained in the Long Form and EZ Form forgiveness application, and the Revised Regulations.

Morse continues to review the evolving regulatory landscape related to PPP loans and is focused on assisting our clients through these unprecedented and challenging times. Please contact the Firm should you have questions concerning this subject, or any other COVID-19 response matters.

Go to our full COVID-19 Resource Collection.