

New PPP Loan Forgiveness Applications: Key Takeaways for Businesses

Here's what you need to know (at least as of January 24, 2021):

Covered Period: The Covered Period begins on the date the loan was originally disbursed. It ends on a date selected by the borrower that is at least 8 weeks following the date of the loan disbursement and no more than 24 weeks after the date of the loan disbursement.

Alternative Payroll Covered Period: This option, previously available to borrowers with a payroll cycle that was biweekly or more frequent, is no longer able to be utilized by businesses.

Cash Compensation: The components of cash compensation mostly remain the same: these include gross salary, gross wages, gross tips, gross commissions, paid leave (vacation, family, medical or sick leave, not including leave covered by the Families First Coronavirus Response Act), and allowances for dismissal or separation paid or incurred during the Covered Period. However, now that recipients are eligible to utilize Employee Retention Credits (ERCs), borrowers should "not include qualified wages taken into account in determining the Employee Retention Credit," according to the SBA.

Cash Compensation Limitation: For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period. With the updated ability to select any period between eight and 24 weeks, the borrower must now prorate based on the number of weeks in the Covered Period selected (rather than either eight or 24 weeks, as previously described).

Owner Cash Compensation Limitation: For any owner-employee (with an ownership stake of 5% or more) or self-employed individual/general partner, the dollar amount for which forgiveness is requested cannot exceed 2.5 months' worth of compensation received during the year used to calculate the PPP loan amount, capped at \$20,833 per individual in total across all businesses.

Nonpayroll Costs: Prior guidance provided the opportunity for PPP borrowers to receive forgiveness for mortgage interest, utilities and rent obligations if certain criteria were met. Current guidance, as reflected in the new loan forgiveness applications, expands nonpayroll costs. Here's a closer look at these new eligible costs for loan forgiveness:

Covered operations expenditures: These include payments for any business software or cloud computing service that facilitates business operations; product or service delivery; the processing, payment or tracking of payroll expenses; human resources; sales and billing functions; or accounting for the tracking of supplies, inventory, records and expenses. ☐ Covered property damage costs: These include costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 and were not covered by insurance or other compensation. ☐ Covered supplier costs: These include expenditures made to a supplier of goods for the supply of goods that are essential to the operations of the borrower at the time at which the expenditure is made, and

made pursuant to a contract, order or purchase order in effect prior to the beginning of the Covered Period (for perishable goods, the contract, order or purchase order may have been in effect before or at any time during the Covered Period). ☐ Covered worker protection expenditures: These include: o Operating or capital expenditures that facilitate the adaptation of an entity's business activities to comply with the requirements established or guidance issued by the Department of Health and Human

Services, the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration; or o Any equivalent requirements established or guidance issued by a state or local government, during the period starting March 1, 2020, and ending on the date on which the national emergency declared by the president, with respect to the Coronavirus Disease 2019 (COVID19), expires related to maintenance standards for sanitation, social distancing or any other worker or customer safety requirement related to COVID-19 (not including residential real property or intangible property).

Applying for Loan Forgiveness:

Each PPP loan must use a separate loan forgiveness application form. You cannot use one form to apply for forgiveness of both a First and Second Draw PPP loan. Borrowers must submit a loan forgiveness application for their First Draw PPP Loan before or simultaneously with the loan forgiveness application for their Second Draw PPP Loan, even if the calculated amount of forgiveness on their First Draw PPP Loan is zero.

Revised Form 3508S (as of 1/19/2021) implements the requirement of the Economic Aid Act that SBA adopt a one-page application form with simplified documentation requirements for borrowers with loans of \$150,000 or less. Form 3508S requires fewer calculations and less documentation for eligible borrowers.

Revised Form 3508 (as of 1/19/2021) is the general form to be used by borrowers that do not qualify for Form 3508EZ or 3508S. It is very similar to previous Form 3508, with minor changes to implement the Economic Aid Act, such as adding the four new categories of eligible costs. Borrowers must submit payroll and nonpayroll documentation as described in the instructions.

Revised form 3508EZ (AS OF 1/19/2021) is available to borrowers that did not reduce salary or wages of any employee by more than 25 percent and did not reduce the number of employees or average paid hours. It is also available to borrowers that did not reduce salary or wages of any employee by more than 25 percent and were unable to operate at the same level of business capacity because of COVID-related restrictions.

Breaking Down Form 3508S

Perhaps the most anticipated guidance we have seen throughout the PPP is the release of the simplified application for PPP loans of \$150,000 or less — given that approximately 87% of the 5.2 million PPP borrowers fall into this category.

Most borrowers using this form will only be required to report to their lender the amount of loan spent on payroll costs, as well as the requested forgiveness amount — which may be comprised of both eligible payroll and nonpayroll costs — in addition to other loan data (i.e., the date of the loan disbursement, the Covered Period, etc.).

Although Form 3508S is available for PPP loans of \$150,000 or less, specific exemptions exist for those borrowers that received PPP loans of \$50,000 or less. Generally, a borrower with a loan of \$50,000 or less is

exempt from any reductions in the borrower's loan forgiveness amount based on reductions in full-time equivalent (FTE) employees. As a result, those borrowers with PPP loans of more than \$50,000, but less than or equal to \$150,000 or less, are NOT exempt from reduction in loan forgiveness based on a reduction in FTE employees.

Form 3508S reduces the amount of information and documentation provided to the lender at the time the borrower applies for loan forgiveness. However, the borrower must accurately calculate the requested loan forgiveness amount and verify the payments for the eligible costs included in it. Furthermore, while "no documentation is required to be submitted to the lender upon application for loan forgiveness," the borrower must retain all employment records/payroll documentation in its files for four years and all other documentation for three years after the date the loan forgiveness application is submitted to the lender, and permit authorized representatives of the SBA — including representatives of its Office of Inspector General — to access such files upon request.

Breaking Down Form 3508EZ

The changes to Form 3508EZ are minimal in comparison to its counterparts: Form 3508S and Form 3508. The application has been updated to accommodate the amendments to the PPP, most notably the addition of the new nonpayroll expense categories eligible for loan forgiveness. The primary change to the revised form pertains to defining which borrowers are eligible to use Form 3508EZ.

To utilize Form 3508EZ, a borrower must certify to one of the following criteria: o The borrower did not reduce the annual salaries or hourly wages of any employee by more than 25% during the Covered Period, compared to the most recent full quarter before the Covered Period (certain exceptions apply), 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 (certain exceptions apply).* o The borrower did not reduce the annual salaries or hourly wages of any employee by more than 25% during the Covered Period compared to the most recent full quarter before the Covered Period (certain exceptions apply), AND the borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020, and December 31, 2020 (or, for a PPP loan made after December 27, 2020, requirements established or guidance issued between March 1, 2020, and the last day of the Covered Period) 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 customer safety requirement related to COVID-19. (Borrowers qualifying under this criterion must submit to their lender (at the time of applying for loan forgiveness) documentation supporting the average number of FTE employees on payroll they employed on January 1, 2020, and at the end of the Covered Period.)

Breaking Down Form 3508

The revised Form 3508 includes the overall changes to the PPP noted above. However, it also encompasses some specific rules that are otherwise not applicable to Form 3508S or Form 3508EZ.

Here's a closer look:

o FTE Reference Period: Many questions have surfaced from the borrowing community about the reference period used in the calculation of the FTE Reduction Quotient, the discount factor for a business that did not maintain their workforce at certain levels. The release of the application affirms that the reference period remains unchanged. The borrower still will select a reference period of either February 15, 2019–June 30, 2019, or January 1, 2020–February 29, 2020. In the case of seasonal employers, the reference period can be either of the preceding periods or any consecutive 12-week period between February 15, 2019, and February 15, 2020.

o FTE Reduction Safe Harbor 2: Previously, this clause provided borrowers a safe harbor relating to FTE employee reductions if the borrower reduced FTE employees during the period from February 15, 2020–April 26, 2020, and then restored FTE employee levels by the earlier of the date on which the loan forgiveness application was submitted or December 31, 2020 (the FTE Restoration Date). Borrowers who received a PPP loan before December 27, 2020, and have not submitted a loan forgiveness application, will now be required to use December 31, 2020, as the FTE Restoration Date to meet this safe harbor. For borrowers who received PPP loans after December 27, 2020, the FTE Restoration Date will be the last day of the Covered Period elected by the borrower.

o Salary/Hourly Wage Reductions: Previously, a borrower was required to evaluate if they reduced the annual salaries or hourly wages of certain employees during the Covered Period by more than 25% as compared to the first quarter of 2020. For borrowers who obtained loans on or before June 30, 2020, that still holds true. However, for borrowers who received either First or Second Draw PPP loans after June 30, 2020, the comparison period for wage reductions has been modified to the most recent full quarter before the Covered Period.

o Salary/Hourly Wage Reduction Safe Harbor: Previously, this clause provided borrowers a safe harbor relating to salary/hourly wage reductions if the borrower reduced the wage rate during the period from February 15, 2020–April 26, 2020, and then restored the wage rate by the earlier of the date on which the loan forgiveness application was submitted or December 31, 2020 (the Wage Restoration Date). Borrowers who received a PPP loan before December 27, 2020, and have not submitted a loan forgiveness application, will now be required to use December 31, 2020, as the Wage Restoration Date to meet this safe harbor. For borrowers who receive PPP loans after December 27, 2020, the Wage Restoration Date will be the last day of the Covered Period elected by the borrower.

What's next

Participating lenders will await the release of Procedural Notices to further outline their responsibilities associated with these new loan forgiveness applications. Additionally, participating lenders will be diligently working to modify their existing processes and platforms to accommodate these new applications. We anticipate the SBA will release FAQs to provide further clarification to borrowers and lenders resulting from the changes to the PPP in recent weeks. In the interim, businesses should consider evaluating their eligibility for a Second (or First) Draw PPP Loan and/or utilizing the ERCs as they re-evaluate their loan forgiveness strategy.

Forms PPP Borrower Application Form 2483 (Revised 1/8/2021)

<https://home.treasury.gov/system/files/136/PPPBorrower-Application-Form.pdf>

PPP Second Draw Borrower Application Form 2483-SD

<https://home.treasury.gov/system/files/136/PPPSecond-Draw-Borrower-Application-Form.pdf>

Loan Forgiveness Application Form 3508 (revised 1/19/2021)

<https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-and-Instructions--Form3508-1192021.pdf>

Loan Forgiveness Application Form 3508EZ (revised 1/19/2021)

<https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-Instructions--Form3508EZ1192021.pdf>

Loan Forgiveness Application Form 3508S (revised 1/19/2021)

<https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-Instructions--Form-3508S1192021.pdf>