

Paycheck Protection Program Forgiveness Updates and Other Loan Programs

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PPP Forgiveness Updates

The Paycheck Protection Program Flexibility Act (“PPPFA”) was signed into Law on June 5, 2020

PPPFA Loan Forgiveness Revisions

- Time to spend funds increased from 8 weeks to 24 weeks (or December 31, 2020)
- Requirement that at least 75% of eligible expenses incurred during the covered period be payroll was reduced to 60%
- Extended date by which business could rehire and be relieved from reduction in forgiveness from June 30, 2020 to December 31, 2020

PPPFA Loan Forgiveness Revisions Cont.

- Forgiveness also permitted if FTEs were reduced but Borrower can demonstrate attempts to rehire past or similarly qualified new employees, or business has been unable to return to pre-February 15, 2020 level of business due to compliance with COVID-19 regulations or guidance issued by the Department of Health and Human Services, Centers for Disease Control and Prevention, or Occupational Safety and Health Administration between March 1 and December 1, 2020.

PPPFA Loan Forgiveness Revisions Cont.

- Deferral period extended from 6 months to either: i) the date the loan forgiveness is determined; or ii) 10 months after last day of covered period if the Borrower does not apply for forgiveness.
- Maturity date extended from 2 years to 5 years for loans made after June 5, 2020. Pre-existing loans may be extended upon Lender agreement.
- Permitted PPP loan recipients to participate in delaying payment of employer payroll taxes through December 31, 2020 so that 1/2 of the deferred taxes must be paid by December 31, 2021. Any remaining amount owed for 2020 employment taxes is due by December 31, 2022.

PPPFA Loan Forgiveness IFR

- The SBA issued a new Interim Final Rule (the “IFR”) clarifying the requirement that at least 60% of eligible expenses (reduced from 75%) incurred during the covered period be spent on payroll is not a cliff
- Rather, it is a proportional limit on nonpayroll costs
- Clarifies that June 30, 2020 is the last date on which a PPP loan can be approved

PPPFA Loan Forgiveness IFR

The IFR clarified how owner compensation is calculated using either:

- 8 weeks of 2019 net profit (up to \$15,385) for an 8-week covered period; or
- 2.5 months of 2019 net profit (up to \$20,833) for a 24-week covered period
- Schedule C filers used this calculation to calculate their maximum loan amount
- Does not clarify which limit applies to S-corporation owners

PPPFA Loan Forgiveness IFR

S-corporation owner limitation appears to be \$20,833, since Schedule A of the application places owner-employees, self-employed individuals, and general partners together.

PPPFA Loan Forgiveness IFR

The IFR clarified how employee compensation is calculated using either:

- 8 weeks (56 days) of payroll costs capped at \$100,000 of annualized pay (up to \$15,385) for an 8-week covered period; or
- 24 weeks (168 days) of payroll costs capped at \$100,000 of annualized pay (up to \$46,154) for a 24-week covered period

Payroll includes employee salary, wages, commissions, tips, allowance for dismissal, vacation, parental, family, medical, sick leave retirement benefits, payments for provision of group health care benefits, payment of state or local tax assessed on employee compensation paid by the employer (like unemployment insurance premiums)

PPPFA Loan Forgiveness IFR

Nonpayroll expense covered period has also been extended to expenses incurred or paid during the 24 week period.

PPPFA Loan Forgiveness Applications

Two new Forgiveness Applications have been released:

- Revised full application
- An EZ version (Form 3508EZ)

PPPFA Loan Forgiveness Applications

A Borrower can use the EZ version if:

- They are self-employed, independent contractor, or sole proprietor and have no employees and did not include employees in payroll computations; OR
- Did not reduce either: a) the number or hours of their employees; or b) the salaries or wages of their employees by more than 25%; OR
- Experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of their employees by more than 25%.

PPPFA Loan Forgiveness Applications

The Loan Forgiveness EZ Form

- Has fewer calculations
 - Three pages long rather than eleven
 - No schedules
- Requires less documentation for covered period

PPP Loan Forgiveness Applications: Revisions to full Application

Payroll costs:

- S corporation owners cannot be included when calculating payroll costs
- Retirement costs for S corporation owners are eligible payroll costs.

PPP Loan Forgiveness Applications: Revisions to full Application

Safe Harbor date:

- Extended to December 31, 2020
- Safe harbors for salary/wage reduction and number of employee reductions can be applied as of the date the loan forgiveness application is submitted
- No requirement to wait until December 31, 2020
- Incorporates new terms like 24 week period and 60% threshold

PPP Loan Forgiveness

Current News:

- Significant pressure on Trump administration to disclose names of borrowers receiving loans
- Has not been publicized thus far
- Senator Marco Rubio indicated that PPP loan disclosure will be provided for larger loan recipients, but discussions are still being held on how to treat smaller loans
- During a hearing in front of Rubio's committee Treasury Secretary Mnuchin said the names and amounts of specific PPP loans are proprietary information
- Loan application says information about approved loans would automatically be released under FOIA including amount and name

PPP Loan Forgiveness

Current News:

- The SBA has published general information about the program
- Publicly traded companies have self reported material financial events including loan receipt to the SEC
- The SBA has also shared this information with the Justice Department for investigating potential cheaters
- Administration has resisted sharing information with Government Accountability Office, the Pandemic Response Accountability Committee, and various members of Congress

PPP Loan Forgiveness

Key Resources:

- <https://www.sba.gov/document/sba-form--paycheck-protection-program-loan-forgiveness-application-revised-6-16-2020>
- <https://www.sba.gov/document/sba-form--paycheck-protection-program-ez-loan-forgiveness-application-6-16-2020>

Additional Financing Options: EIDL

Economic Injury Disaster Loans (“EIDL”):

- SBR reopened EIDL program this week
- Recipients of PPP loans can receive EIDLs so long as they are used for different purposes
- Eligible business include small business concerns (as defined by the SBA) or businesses with up to 500 employees
- EIDLs are not forgivable

Additional Financing Options: EIDL

EIDL Eligibility:

- Capped at \$2,000,000
- Based on cash flow projections and need

Additional Financing Options: EIDL

EIDLs can be used to pay expenses incurred in the ordinary course of business, including but not limited, to:

- Providing sick leave to employees unable to work because of the ongoing pandemic;
- Maintaining payroll;
- Meeting increased supply chain costs;
- Rent and mortgage payments; and
- Repaying debts that cannot be paid due to lost revenue.

Additional Financing Options: EIDL

Additional EIDL Characteristics:

- Personal guarantees are not required for loans up to \$200,000;
- The SBA will not require that the business is unable to obtain credit elsewhere;
- Terms of EIDLs are either 15 or 30 years; and
- Interest rates are subject to change but currently set at 3.75% for for-profit businesses.

Additional Financing Options: EIDL

EIDL Loan Advances:

- A business may request an emergency advance from the SBA for up to \$10,000
- The emergency advance must be paid by the SBA to the business within 3 days of receipt of the application
- An advance need not be repaid even if the SBA ultimately denies the application for the EIDL
- The advance will be deducted from any loan forgiveness amount on you PPP application

Additional Financing Options: Main Street Lending Program

The Main Street Lending Program is aimed at businesses too large to take advantage of the PPP and consists of two parts:

- The Main Street New Loan Facility (“MSNLF”) which are new, unsecured loans originated after April 8, 2020; and the
- Main Street Expanded Loan Facility (“MSELF”) which are increases to loans existing as of April 8, 2020 to businesses
- A Borrower may participate in either the MSNLF or the MSELF, but not both

Additional Financing Options: Main Street Lending Program

In order to be eligible, a Borrower must:

- Be in good financial standing before the crisis;
- Have 15,000 or fewer employees or less than \$2.5 billion in 2019 annual revenues;
- Be created in the US with significant US based employees and operations; and
- Only participate in one of the following: i) MSNLF; ii) MSELF; or iii) Primary Market Corporate Facility established by the Federal Reserve on March 23, 2020

Note that lenders will apply their own underwriting standards and eligibility is not automatic.

Additional Financing Options: Main Street Lending Program

Repayment terms:

- Borrowers don't have to pay any principal in Years 1-2 of the five-year loans.
- Borrowers must pay 15 percent of the principal at the end of each of the Years 3-4.
- The remaining 70 percent will be due at the end of Year 5

Additional Financing Options: Main Street Lending Program

MSNLF Characteristics:

- 5 year maturity date;
- Unsecured, pre-payment permitted without penalty
- Principal and interest payments deferred for one year from origination date;
- Interest rate is equal to the Secured Overnight Financing Rate (“SOFR”) in effect on the date the loan is made (published each day by the NY Federal Reserve) plus 250 to 400 basis points.
- Loan to each business is at least \$250,000 but is capped at the lesser of i) \$25 million; or (ii) an amount that, when added to the business's existing outstanding and committed but undrawn debt, does not exceed four times the business's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA")

Additional Financing Options: Main Street Lending Program

MSELF Characteristics:

- 5 year maturity date;
- Secure or unsecured, pre-payment permitted without penalty
- Principal and interest payments deferred for one year from origination date;
- Interest rate is equal to the Secured Overnight Financing Rate (“SOFR”) in effect on the date the loan is made (published each day by the NY Federal Reserve) plus 250 to 400 basis points.
- Loan to each business is at least \$250,000 but is capped at the lesser of i) \$15 million; or (ii) 30% of the businesses existing outstanding and committed but undrawn bank debt; or (iii) an amount that when added to the Borrower’s existing outstanding and committed but undrawn debt, does not exceed 6 times the business’s 2019 EBITDA (Note that MSNLF loans only require 4X 2019 EBITDA)

Additional Financing Options: Main Street Lending Program

Loan Proceeds Uses:

- Business must make reasonable efforts to maintain payroll and retain employees during the term of the loan.

Loan Proceeds Prohibited Uses:

- To repay or refinance pre-existing loans or lines of credit made by the lender to the business. In the context of MSELF loans, this includes using the proceeds of the upsized tranche of the MSELF loan to repay or refinance the pre-existing portion of the MSELF loan. Secure or unsecured, pre-payment permitted without penalty
- To repay other loan balances; or repay debt of equal or lower priority, with the exception of mandatory principal payments, unless the business has first repaid the MSNLF or MSELF loan in full.

Additional Financing Options: Main Street Lending Program

Loan Restrictions:

- **Stock Repurchase:** While the loan is outstanding and for 12 months thereafter, businesses cannot repurchase an equity security that is listed on a national securities exchange of the business or any parent company of the business (unless there is a contractual obligation to do so that predates March 27, 2020).
- **Capital Distributions:** While the loan is outstanding and for 12 months thereafter, businesses cannot repurchase an equity security that is listed on a national securities exchange of the business or any parent company of the business (unless there is a contractual obligation to do so that predates March 27, 2020).

Additional Financing Options: Main Street Lending Program

Compensation: Any business receiving a loan is prohibited for 12 months after the term of the loan, from:

1. For any officer or employee whose total compensation exceeded \$425,000 in calendar year 2019, providing:
 - A. Compensation to such individual over such amount over any consecutive 12 months during the covered period; or
 - B. Severance benefits exceeding more than two times such 2019 compensation amount.
2. For any officer or employee whose total compensation exceeded \$3,000,000 in calendar year 2019, providing compensation that exceeds the sum of:
 - A. \$3,000,000, plus
 - B. 50% of the amount in excess over \$3,000,000 that the officer or employee received in calendar year 2019.

Questions?

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