

New Interim Final Rule: Revisions to PPP Loan Forgiveness and Loan Review Procedures

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On June 22, 2020, the Small Business Administration (“**SBA**”) released a new [interim final rule](#) (“**New IFR**”) on the Paycheck Protection Program (“**PPP**”), making revisions to the Loan Forgiveness Interim Final Rule and SBA Loan Review Procedures Interim Final Rule. New IFR mainly reflects the changes to previous guidance in light of the Paycheck Protection Program Flexibility Act of 2020 (the “**PPFPA**”), signed into law on June 5, 2020. New IFR also makes the necessary revisions to prior guidance to incorporate the new alternative loan forgiveness application form, [SBA Form 3508EZ](#).

The PPP is a small business loan program established pursuant to Title I of the Coronavirus Aid, Relief, and Economic Security (“**CARES**”) Act signed by President Trump on March 27, 2020 and supplemented by the Paycheck Protection Program and Health Care Enhancement Act (the “**PPP/HCE Act**”) on April 24, 2020 and PPFPA.

Below is a high-level summary of the changes to the PPP set forth in the New IFR. The SBA and U.S. Department of Treasury may provide further guidance and regulations in the coming days. Such guidance and regulations could provide further detail with respect to the usage and forgiveness mechanics for PPP loans and may materially change the summary below. Businesses are encouraged to seek advice from qualified legal counsel when obtaining and seeking forgiveness under a PPP loan.

Summary of Changes

	New IFR	Previous
Forgiveness Covered Period Extension	<p>The period in which all PPP loan funds must be spent to qualify for loan forgiveness (“Covered Period”)</p> <p>Covered Period Loans on and after June 5, 2020: Earlier of (i) 24-weeks following the initial loan disbursement¹; or (ii) December 31, 2020.</p> <p>Loans before June 5, 2020: Either (i) Original 8-week period; or (ii) Extend to 24-week period.</p>	<p>The period in which all PPP loan funds must be spent to qualify for loan forgiveness (“Covered Period”)</p> <p>Covered Period All loans: • 8-weeks following the initial loan disbursement.²</p>

¹ Borrower may elect an alternative Covered Period that begins on the first day of the first payroll cycle in the Covered Period.

² Borrower may elect an alternative Covered Period that begins on the first day of the first payroll cycle in the Covered Period.

<p>Reduction in Percentage of Payroll Costs Eligible for Forgiveness</p>	<p>Minimum percentage of loan forgiveness amount used for payroll costs: 60%</p> <p>Maximum percentage of loan forgiveness amount used for non-payroll costs: 40%</p>	<p>Minimum percentage of loan forgiveness amount used for payroll costs: 75%</p> <p>Maximum percentage of loan forgiveness amount used for non-payroll costs: 25%</p>
<p>Loan Maturity and Deferral Period Extension</p>	<p><u>Loan Maturity</u> Loans made on/after June 5, 2020: 5 years Loans made prior to June 5, 2020: 2 years, but borrowers and lenders may extend to 5 years based on mutual agreement.</p> <p><u>Deferral Period</u></p> <ul style="list-style-type: none"> • Repayment to commence if borrower has not applied for forgiveness within 10 months following the Covered Period. • If borrower applies for forgiveness within 10 months following the Covered Period, no payments (interest or principal) will be required until a decision on the forgiveness amount is made. 	<p><u>Loan Maturity</u> All Loans: 2 years</p> <p><u>Deferral Period</u></p> <ul style="list-style-type: none"> • Six months.
<p>Exemptions to Reduction in Loan Forgiveness Amount</p>	<p>Borrowers are exempt from loan forgiveness reductions arising from:</p> <p><u>Employee Availability</u>³ Borrower's inability to:</p> <ul style="list-style-type: none"> (i) Rehire previous employees that were employed on February 15, 2020; and (ii) Hire similarly qualified individuals for unfilled positions on or before December 31, 2020. <p><u>Business Activity</u> Borrower's documented inability to return to the same level of business activity as before February 15, 2020 due to compliance with federal or local government COVID-19 related worker or customer safety requirements.</p>	<p>Borrowers are exempt from loan forgiveness reductions arising from:</p> <p><u>Employee Availability</u> Borrower's inability to:</p> <ul style="list-style-type: none"> (i) Rehire previous employees that were employed on February 15, 2020.

³ A borrower is required to document, in good faith, its efforts relating to the rehiring or hiring process. To maintain documentation compliance, borrowers will need to show the written offer to rehire an employee, a written record of the offer's rejection, and a written record of efforts to hire a similarly qualified individual. Further, within 30 days of an employee's rejection, a borrower is required to inform the applicable state unemployment insurance office of the rejection.

<p style="text-align: center;">Loan Forgiveness on Compensation for Owner-employees/Self-employed Individuals</p>	<p>The maximum forgiveness amount that owner-employees and self-employed individuals can request, in total across all businesses, for their own payroll is as follows:</p> <p>Loans with 8-week Covered Period: Lesser of:</p> <ul style="list-style-type: none"> (i) 8-weeks' worth of individual's 2019 compensation; or (ii) \$15,385. <p>Loans with 24-week Covered Period: Lesser of:</p> <ul style="list-style-type: none"> (i) 2.5 months' worth of individual's 2019 compensation: or (ii) \$20,533. <p>C-corporation Owner-employees – Capped by amount of their:</p> <ul style="list-style-type: none"> (i) 2019 employee cash compensation; and (ii) Employer retirement and health insurance contributions. <p>S-corporation Owner-employees – Capped by amount of their:</p> <ul style="list-style-type: none"> (i) 2019 employee cash compensation; and (ii) Employer retirement contributions.⁴ <p>Schedule C or F filers – Capped by the amount of their owner compensation replacement (based on 2019 net profit).</p> <p>General Partners – Capped by the amount of their 2019 earnings from self-employment⁵ and multiplied by factor of 0.9235.</p>	<p>The maximum forgiveness amount that owner-employees and self-employed individuals can request, in total across all businesses, for their own payroll is as follows:</p> <p>Loans with 8-week Covered Period: Lesser of:</p> <ul style="list-style-type: none"> (i) 8-weeks' worth of individual's 2019 compensation; or (ii) \$15,385. <p>All Owner-employees – Capped by amount of their:</p> <ul style="list-style-type: none"> (i) 2019 employee cash compensation; and (ii) Employer retirement and health insurance contributions. <p>Schedule C filers – Capped by the amount of their owner compensation replacement (based on 2019 net profit).</p> <p>General Partners – Capped by the amount of their 2019 earnings from self-employment and multiplied by factor of 0.9235.</p>
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⁴ Employer health insurance contributions cannot be separately added because such contributions are already included in the employee's cash compensation.

⁵ This amount is reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties.

<p>Loan Forgiveness Application</p>	<p>A borrower must complete and submit a Loan Forgiveness Application to its lender in order to receive loan forgiveness.</p> <p>Acceptable Loan Forgiveness Application forms:</p> <ul style="list-style-type: none"> (i) SBA Form 3508; (ii) SBA Form 3508EZ⁶; or (iii) Lender equivalent. 	<p>A borrower must complete and submit a Loan Forgiveness Application to its lender in order to receive loan forgiveness.</p> <p>Acceptable Loan Forgiveness Application forms:</p> <ul style="list-style-type: none"> (i) SBA Form 3508; or (ii) Lender equivalent.
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Given the fast pace of developments, businesses are encouraged to seek advice from qualified legal counsel concerning these matters.

For more information, please see the following resources:

1. Prior Haynes and Boone Guidance on the Paycheck Protection Program:

- a. [Bridging the Gap - An Overview of SBA Loans under the Paycheck Protection Program](#) (updated June 8, 2020)
- b. [SBA Issues New Guidance on PPP Loan Forgiveness](#) (June 1, 2020)
- c. [SBA Issues New Guidance on Certification of Necessity Safe Harbor](#) (May 13, 2020)
- d. [SBA Extends Loan Repayment Safe Harbor Date, Provides Additional Guidance on Employees of Foreign Affiliates](#) (May 7, 2020)
- e. [Could Retention of PPP Loan Funds Create False Claims Act Liability?](#) (updated May 6, 2020)
- f. [CARES Act Relief Checklist: Considerations in Deciding What Relief is Right for Your Business](#) (April 6, 2020)
- g. [Full List of Haynes and Boone Alerts on PPP](#)

2. PPP Resources from the SBA and Treasury Department:

- a. [Top-Line Overview of the Program](#)
- b. [Information Sheet for Lenders](#)
- c. [Information Sheet for Borrowers](#) (updated April 2, 2020)
- d. [Borrower Application Form](#) (updated April 3, 2020)

⁶ Use of the simplified 3508EZ form is available only for the following types of borrowers: (i) Borrower who is self-employed and had no employees at the time of the PPP loan application; (ii) Borrower with employees, but who did not reduce employee salaries or wages by more than 25% and did not reduce employee work hours during the Covered Period; or (iii) Borrower with employees, but who did not reduce employee salaries or wages by more than 25% and has experienced reductions in business activity due to compliance with federal or local government COVID-19 related worker or customer safety requirements during the Covered Period.

- e. [Lender Application Form for Federally Insured Depository Institutions, Federally Insured Credit Unions, and Farm Credit System Institutions \(4/3/2020\)](#) (released April 3, 2020)
- f. [Lender Application Form for Non-Bank and Non-Insured Depository Institution Lenders \(4/8/2020\)](#) (released April 8, 2020)
- g. [Lender Agreement to participate in PPP](#) (released April 3, 2020)
- h. [PPP Program Loan Report](#) (updated April 16, 2020)
- i. [Loan Forgiveness Application](#) (released May 15, 2020)
- j. [Alternative Loan Forgiveness Application](#) (released June 16, 2020)
- k. [How to Calculate Loan Amounts](#)
- l. [Search Tools: Find an Eligible Lender](#)

3. Prior SBA Guidance on the Paycheck Protection Program:

- a. [PPP Frequently Asked Questions](#) (updated May 27, 2020)
- b. [Interim Final Rule 1](#) (originally posted April 2, 2020)
- c. [Interim Final Rule on Applicable Affiliation Rules](#) (originally posted April 3, 2020)
- d. [Interim Final Rule on Additional Eligibility Criteria and Requirements for Certain Pledges of Loans](#) (originally posted April 14, 2020)
- e. [Interim Final Rule on Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility](#) (originally posted April 24, 2020)
- f. [Interim Final Rule Additional Criterion for Seasonal Employers](#) (originally posted April 27, 2020)
- g. [Interim Final Rule on Disbursements](#) (originally posted April 28, 2020)
- h. [Interim Final Rule on Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders](#) (originally posted April 30, 2020)
- i. [Interim Final Rule on Nondiscrimination and Additional Eligibility Criteria](#) (originally posted May 5, 2020)
- j. [Interim Final Rule on Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request](#) (originally posted on May 8, 2020)
- k. [Interim Final Rule on Loan Increases](#) (originally posted May 13, 2020)
- l. [Interim Final Rule on Eligibility of Certain Electric Cooperatives](#) (originally posted May 14, 2020)
- m. [Interim Final Rule on Treatment of Entities with Foreign Affiliates](#) (originally posted May 18, 2020)
- n. [Interim Final Rule on Loan Forgiveness](#) (originally published May 22, 2020)
- o. [Interim Final Rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities](#) (originally published May 22, 2020)

4. Resources on the SBA Economic Injury Disaster Loan (EIDL) Program.

- a. [Looking for an Alternative to PPP? Taking a Second Look at the Economic Injury Disaster Loan Program](#) (Haynes and Boone Alert, May 1, 2020).



- b. [SBA's COVID-19 Disaster Loan Program](#) (Haynes and Boone Alert, March 24, 2020)
- c. [SBA EIDL Resource Page](#)

Additional Questions? Contact a member of the Haynes and Boone [Finance](#) or [Corporate](#) Practice Groups at Haynes and Boone, including the following individuals:

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