

Paycheck Protection Program – New Guidance on Early Loan Forgiveness

Max Rodenburg, Rembolt Ludtke LLP

On June 22, 2020, the Small Business Administration (“SBA”) released an Interim Final Rule (“the Rule”) that provides further guidance on loans administered through the Paycheck Protection Program (“PPP”). Specifically, the rule clarifies the process for achieving loan forgiveness. Below is a summary of key provisions:

Earlier Application Availability

- The Rule allows borrowers to file for loan forgiveness anytime between 8 and 24 weeks so long as the borrower has used all the loan funds.
 - o One caveat is that if a borrower applies for forgiveness prior to the conclusion of the covered period, and the borrower has reduced an employee’s pay more than 25%, then the borrower must account for the pay reduction **for the entire covered period**. In other words, the reduction in salary will be “frozen” at the time of submitting the application and the amount will be carried through the end of the covered period.
- In general, borrowers have 10 months from when their covered period ends to apply for forgiveness.

Changes to Forgiveness Cap for Sole Proprietors, Employee Owners, and Independent Contractors

- Previously, the cap on forgiveness for the above-three types of borrowers was \$15,385.
- This amount has been increased to \$20,833, reflecting a 24-week pro-rata calculation of a \$100,000 salary.

New 3508EZ Application

- The Rule creates a streamlined forgiveness application. However, borrowers must fall into *one* of the following categories to use it:
 - o Self-employed with no employees; or
 - o Did not reduce pay to covered employees by more than 25% AND did not reduce the number or hours of their FTE employees (does not apply to reductions caused by an inability to rehire or an employee’s refusal to work restored hours); or
 - o Did not reduce pay to covered employees by more than 25% AND had reduced business because of federal regulations related to COVID-19.
- Covered employees means employees who had compensation below \$100,000 in 2019 or were unemployed in 2019.

Documents Needed for 3508EZ Application

- Payroll Documentation

- Bank account statements or payroll service provider reports documenting amount of cash paid to employees; and
- Tax forms for covered period, i.e. payroll tax filings, wage reporting and unemployment insurance tax filings; and
- Statements documenting amount employer contributed to employee benefit plans that borrower included in forgiveness amount

- Non-payroll Documentation

- Business mortgage interest payments, i.e. copy of amortization schedule, other form of statements that prove payments during covered period, or lender statements from February 2020 through one month following end of covered period; and
- Business rent or lease payments, i.e. copy of lease agreement along with statements proving payments during covered period, or lessor statements from February 2020 through one month following end of covered period; and
- Business utility payments, i.e. copy of invoices from February 2020 along with statements proving payment during covered period

The 3508EZ application can be found here: <https://www.sba.gov/sites/default/files/2020-06/PPP%20Forgiveness%20Application%203508EZ%20%28%20Revised%2006.16.2020%29.pdf>

Complete instructions for the 3508EZ application can be found here: <https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Form-EZ-Instructions.pdf>

For additional information about the Paycheck Protection Program, please contact the attorneys at Rembolt Ludtke LLP. We look forward to serving you!