

PPP Loan Forgiveness All Will be Forgiven- Maybe

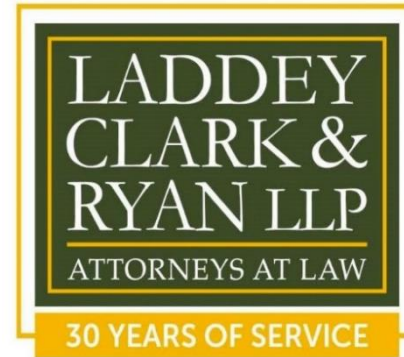


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PPP FLEXIBILITY ACT OF 2020

PPP Flexibility Act of 2020 Highlights

H.R. 7010, signed by President Trump Friday, June 5, 2020

- **Loan Terms**

- Period to apply for PPP loan forgiveness extended to December 31, 2020
- Loan term minimum of 5 years (for loans after 6/5/2020), existing loan terms can be extended
- Coverage Period: 8 week spend period increased to 24 weeks
 - the earlier of –
 - 24 weeks from loan origination; or
 - December 31, 2020
 - Borrowers that received loan before 6/5/2020 can elect to keep 8 week period

- **Payroll v. Non-Payroll**

- 75%/25% now 60%/40%
- No forgiveness at all if don't spend at least 60% on payroll (Strict Interpretation of Amendment)
 - Joint Statement by Treasury Secretary and SBA Administrator: borrowers will continue to be eligible for partial forgiveness

- **Employee Safe Harbor**

- Safe harbor date to rehire employees (or replacements) or restore wages changed from June 30th to December 31, 2020. Presume if you stick with 8 week period your date is June 30, 2020.
- New exceptions for forgiveness if document that can't rehire or find qualified employees or restore operations to 2/15/2020 levels (base on having to comply with CDC, OSHA, Health and Human Services...requirements 3/1/2020 to 12/31/2020)

PPP Flexibility Act of 2020 Highlights (cont.)

- **Deferral of Principal, Interest, Fees**
 - Payment deferral increased from 6 months to up to 1 year (includes principal, interest and fees) until amount of loan forgiveness paid by SBA to lender
 - If don't apply for loan forgiveness payments deferral concludes 10 months from the end of the covered period
 - Have 10 months to apply for forgiveness from the last day of the covered period
- **Deferral of Payroll Taxes**
 - Eliminates paragraph (3) of Section 2302(a) of the CARES Act prohibiting borrowers that receive forgiveness to defer payroll taxes

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THE APPLICATION

75/25 or 60/40

The Application

- Covered Period (“CP”)-currently the 8 week loan use period (Flex 24)
- Alternative Payroll Covered Period (“APCP”)-bi-weekly or more frequent payroll-can start 8 week period using the first pay period beginning with first day of pay period following disbursement date
- Forgiveness applies to Eligible Payroll Costs paid and incurred during the CP or APCP. Paid on date checks are distributed or ACH originates. Incurred, the date the employee pay is earned. If incurred but not paid during the CP, ok as long as pay on or before next regular payroll date. At least 75% - now 60%
- Eligible non-payroll costs-no more than 25%-paid or incurred (ok if paid by next bill date) – now 40%
 - Loans-interest on real or personal property debt incurred before 2/15/2020
 - Leases-real or personal property in force before 2/15/2020
 - Utility payments-electric, gas, water, transportation, phone or internet that began before 2/15/2020

The Application (cont.)

- Employee Retention-possible forgiveness reduction
- Reference period-2/15/19 to 6/30/19; 1/1/2020 to 2/29/2020 or if seasonal employer either these periods or 12 week period from 5/1/19 to 9/15/19
- Calculation of number of full-time equivalent (FTE) employees:
 - For each employee either divide average hours paid per week by 40 and round to the nearest tenth (capped at “1”); or
 - each employee that work 40+ hours per week equals “1” and employees that work less than 40 equal “.5”
- Employees laid off between 2/15/2020 and 4/26/2020 that refuse to return to work after good faith written offer to bring them back does not negatively affect forgiveness; nor fired for cause, voluntarily resigned; voluntarily requested and received a reduction in hours
- Safe harbor, If reduced FTE levels 2/15/2020 to 4/26/2020 and restored FTE levels by 6/30/2020 to FTE levels for pay period including 2/15/2020

The Application (cont.)

- Salary/Wage Reductions (employees earning <\$100k) may affect forgiveness
- Applies to employees whose salary/hourly wages were reduced by more than 25% during the CP or APCP
- Compare to salary/wages to period 1/1/2020 to 3/31/2020.
- If reduced more than 75%-Safe Harbor
 - Avg annual salary or hourly wage rate as of 2/15/2020
 - Compare to avg annual salary or hourly wage rate 2/15/2020 through 4/26/2020, if less than 2/15/2020
 - Compare 2/15/2020 to rate as of 6/30/2020, = or > safe harbor met
- If restored salary/wage level by June 30, 2020 the reduction should not apply to that employee

The Application - Documentation for Loan Forgiveness

- Required to Submit
 - Form 3508 or lender equivalent
 - PPP Schedule A
 - **Payroll Documentation**
 - Bank Account Statements or third-party payroll service provider reports
 - Tax Forms
 - Payroll tax filings, i.e. Form 941
 - State quarterly business and individual wage reporting and unemployment insurance tax filings
 - **Employer Contributions to Employee Health Insurance and Retirement Plans:** Payment receipts, cancelled checks, or account statements
 - **FTE**
 - Avg. number of FTE employees between 2/15/19 – 6/30/19; 1/1/20 – 2/29/20; Seasonal Employees 2/15/19 – 6/30/19; 1/1/20 – 2/29/20; or a consecutive 12 week period between 5/1/19 -9/15/19
 - **Non-Payroll**
 - Business mortgage interest payments: Copy of lender amortization schedule and receipts or cancelled checks; or lender account statements from February 2020 – CP
 - Business rent or lease payments: Copy of current lease agreements and receipts or cancelled checks, or lessor account statements from February 2020 – CP.
 - Business utility payments: Copy of invoices and receipts; cancelled checks; account statements

The Application - Documentation for Loan Forgiveness

- Required to Maintain
 - Documentation supporting listing each individual employee in PPP Schedule A Worksheet Table 1
 - Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 2; each listed employee in 2019 with compensation > \$100,000
 - Documentation regarding employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule
 - Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor”
- Optional
 - PPP Borrower Demographic Information Form (Optional)

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SBA GUIDANCE-INTERIM FINAL RULE

IFR-Process

- Submit Application to PPP lender-no guidance as to timing-current forgiveness application lists expiration date of 10/31/2020 (Flex 10 months)
 - Loan application remains at 6/30/2020
- Lender Reviews and makes initial decision regarding forgiveness (applies if SBA not reviewing forgiveness application-not sure how SBA reviews app before they receive it)-approve forgiveness, deny or deny without prejudice
- Lender has 60 days from receipt of application to notify SBA of decision
- If entitled to forgiveness (in whole or in part), lender requests payment from SBA
- SBA, subject to subsequent review, 90 days to pay lender, plus accrued interest, less an EIDL advances-Interest on forgiven principal is forgiven
- Lender responsible to notify borrower of forgiveness amount, depending on timing lender may need to refund payments made on loan
- Any amount not forgiven is payable within the 2-5 year loan term-not accelerated

IFR-Forgiveness Caps Owner/Employees or Self Employed

- Lesser of 8/52 of 2019 compensation, or \$15,385 per individual
- Owner/Employees cap applies to cash comp, plus employer retirement and health care contributions
- Schedule C filers, capped by their owner comp replacement based on 2019 net profit
- General Partners-capped 2019 net earning from self employment (less section 179 deduction, unreimbursed partnership expenses and oil/gas depletion) x .9235
- Self employed-no forgiveness for retirement or health insurance contributions

IFR-Payroll Forgiveness

- Clarifies that salary, wages, commissions paid to furloughed employees can be paid from PPP-as long as total payments do not exceed \$100k annualized (\$15,385 over 8 weeks)
- Hazard pay and bonuses paid during the covered period or AP covered period can be paid from PPP-as long as total payments do not exceed \$100k annualized (\$15,385 over 8 weeks)
- Payroll costs include:
 - Salary, wages, commissions or similar compensation;
 - Cash tips or equivalent (based on employer records or if no records reasonable good faith estimate;
 - Vacation, parental, family, medical or sick leave; and
 - Payment for separation or dismissal
 - Employee benefits-health care coverage, including insurance premiums and retirement plan contributions
 - Employer portion of state and local taxes

IFR Payroll Forgiveness

- Safe harbor for laid off employees that refuse to return to work, also applies to employees whose hours were cut (good faith written offer to restore hours, employee rejected, maintain records)
- Plus for laid off employees, employer must notify state unemployment of employees rejection within 30 days
- Payroll forgiveness if FTE headcount reduced. Based on number of employees during reference period compared to covered or alternative payroll covered period. i.e. reference FTE 10 and CP 8, only entitled to 80% forgiveness of loan
- Payroll forgiveness if employee wages reduced by 25%+; determine for each employee. \$1,000 week employee reduced to \$700, 25% of wages reduced does not apply (\$250) so forgiveness reduced by \$50 per week or \$400 for that employee over 8 week period
- If reduce both head count and employees hours (but not wage rate) only use head count reduction factor

IFR-Nonpayroll Costs Forgiveness

- A nonpayroll cost is eligible for forgiveness if it was:
 - Paid during the covered period; or
 - Incurred during the covered period and paid on or before the next regular billing date.
 - Even if the billing date is after the covered period.
- **Forgivable v. Nonforgivable**
 - Interest on mortgage
 - Interest payments on business mortgage obligation on real or personal property (before 2/15/2020)
 - Prepayments of mortgage interest is not forgivable
 - What about leases, utilities?
 - Payments on business rent under lease agreement (in force before 2/15/2020)
 - Electricity, gas, water, transportation, telephone, or internet (in force before 2/15/2020)
 - May include lease of equipment, but does not apply to purchasing new equipment.

IFR-Loan Review

- **Timeline**

- Lender must issue a decision to SBA on loan forgiveness within 60 days after receipt of loan forgiveness application.
 - Approval (in whole or in part)
 - SBA will remit the appropriate forgiveness amount plus interest to lender within 90 days of lender's decision
 - Denial
 - Denial without prejudice
 - Borrower may request reconsideration of application
- Certification “current economic uncertainty” makes the loan request necessary to support the ongoing operations of the Applicant.
 - Safe Harbor <\$2 million PPP Loan
 - Less likely to have had access to adequate sources of liquidity

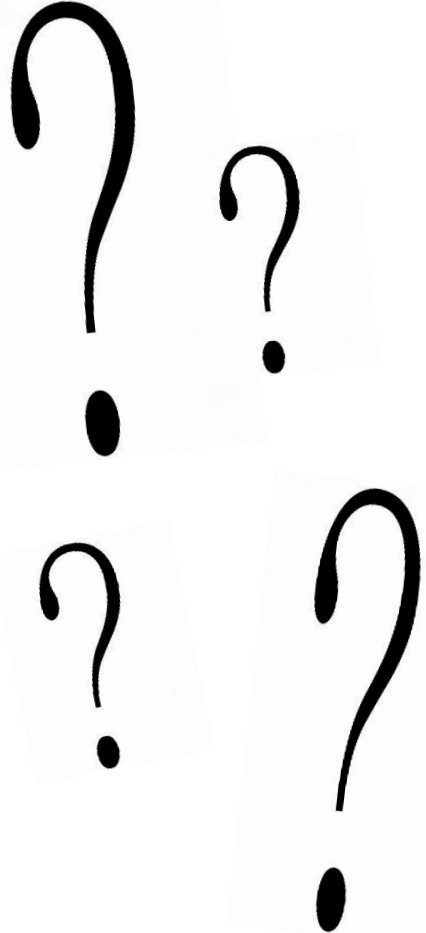
IFR-Loan Review (cont.)

- SBA is authorized to review any PPP loan at any time
 - Loan Amounts and Use of Proceeds
 - Loan Forgiveness Amounts
- Borrower must retain PPP documentation for six years after the date the loan is forgiven or repaid in full
 - If a borrower is deemed ineligible to receive the loan amount or loan forgiveness, the lender is required to contact the borrower in writing to request additional information.
 - SBA may also seek repayment of the outstanding PPP loan balance or pursue other available remedies.
 - SBA intends to issue a separate interim final rule on the appeal process.

Helpful Resources SBA Support Programs

- **PPP Forgiveness Application:**
- <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf>
- **PPP Interim Rules:**
- <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
- **Paycheck Protection Program FAQs**
- <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

Questions?



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