

## **Update on SBA PPP Forgiveness 3508 Application**

SBA/Treasury released updated SBA PPP Forgiveness 3508 Application forms implementing the changes which The Franklin Partnership lobbied to secure in the Paycheck Protection Program Flexibility Act recently signed into law. The forms include the changes such as the lowering the payroll costs expenditure requirement from 75% to 60% meaning a Borrower may now spend no more than 40% on eligible non-payroll costs instead of just 25% as in the original form. The forms also allow certain borrowers to elect an 8 or 24 week term, while extending the safe harbor date from June 30, 2020 to December 31 or at the time the Borrower submits their forgiveness application, whichever comes sooner.

Businesses are reminded that the SBA may NOT approve any loans after June 30, 2020, therefore, if a company has yet to apply for a PPP loan but intends to do so, we suggest filing your loan application with the lender no later than June 23. Please consult your accountant to see how your specific situation is impacted by the new form as many business who elect to use the 8-week forgiveness period are now eligible to submit their new 3508 form. Owner-employees should pay particular attention to the new limitations on compensation and health care.

As to the question of utilities, we did not receive much additional guidance beyond what was previously provided and most in Washington do not expect further clarification. The language still states, “covered utility payments: business payments for a service for the distribution of electricity, gas, water, telephone, transportation, or internet access for which service began before February 15, 2020 (“business utility payments”)”.

We are still lobbying to make changes to the bill and we have commitments from the top tax writers in Congress they will reverse the IRS Notice barring those who have their PPP loan forgiven from being able to deduct wages, utilities, and rent as expenses. A bill may move to address this and other issues towards the end of July.

### **Loan Forgiveness Forms and Instructions**

Loan Forgiveness Calculation Form 3508 (6/20) - <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf>

Loan Forgiveness Form 3508 Instructions - [https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Instructions\\_1\\_0.pdf](https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Instructions_1_0.pdf)

Loan Forgiveness Application Form 3508EZ (6/20) - <https://home.treasury.gov/system/files/136/PPP-Forgiveness-Application-3508EZ.pdf>

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

### **FTE Return Date, Safe Harbor Reference, is When Application Submitted**

The single most important clarification is that the Borrower must return their FTE count at the time the Borrower is applying for loan forgiveness and not on December 31 or at the end of the 24-week term, if elected. The new forgiveness application form asks for the number of employees at the time of loan application and at the time of the forgiveness application. This is a critical point on which we lobbied both the Congress and administration to clarify that employers are not expected to retain employees through the end of 2020 but will use the date the forgiveness application is submitted.

Similarly, the Safe Harbor test for an inability to return to normal pre-February 15 operating levels is not determined by the December 31 date, but rather when the Borrower submits the forgiveness application. Borrowers don't have to wait until Dec. 31 to apply for forgiveness to use the safe harbors.

### **Owner Provisions**

Certain borrowers should pay particular attention to the owner and owner-employee provisions in the application. Borrowers may elect the 8-week or 24-week covered period, loans originating on or after June 5 are on a 24-week term.

Employees are capped at \$15,385 for eight weeks for \$46,154 for 24 weeks. Owner compensation is determined based on 2019 compensation amounts, capped at \$15,385 for eight weeks. In the case of a 24-week period, owner compensation is the lower of \$20,833 or the two-and-half-month equivalent of the owner's applicable compensation in 2019 for the 24-week period.

S-corporation owners cannot include health insurance costs when calculating payroll costs; however, retirement costs for S corporation owners are considered eligible costs.

### **Two Forms – 3508 and 3508EZ**

The SBA has two forgiveness application forms, the updated 3508 and 3508EZ. Both forms still require significant calculations with the 3508EZ still needing the same data as the longer form. Borrowers must indicate on both forms whether their loan is in excess of \$2 million, indicating SBA does intend to separate those loans from the others for an initial automated review. The EZ form does not require FTE documentation as only those who did not reduce their FTE during the covered period may use the shortened application.

A Borrower may use the 3508EZ if they:

- Test 1: Self-employed with no employees
- Test 2: No FTE Reduction; No Salary, Wages Reduced by 25% More AND Unable to Rehire
  - Did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period compared to between January 1, 2020 and March 31, 2020 and 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; AND
  - Borrower may ignore reductions that arose from an inability to rehire the individuals or was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020; borrower may also ignore reductions in an employee's hours that the Borrower offered to restore and the employee refused.
- Test 3: No FTE Reduction; No Salary, Wages Reduced by 25% More AND Business Activity Down
  - Did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period compared to between January 1, 2020 and March 31, 2020 and 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; AND
  - 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 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.