

Eye on Washington Regulatory Update



New Exemption From Forgiveness Reductions For PPP Loans Under \$50,000

On October 8, 2020, the Treasury Department and Small Business Administration (SBA) released a simplified Payroll Protection Program (PPP) forgiveness application (Form 3508S) and instructions for loans of \$50,000 or less, as well as an Interim Final Rule (IFR) which explains the changes.

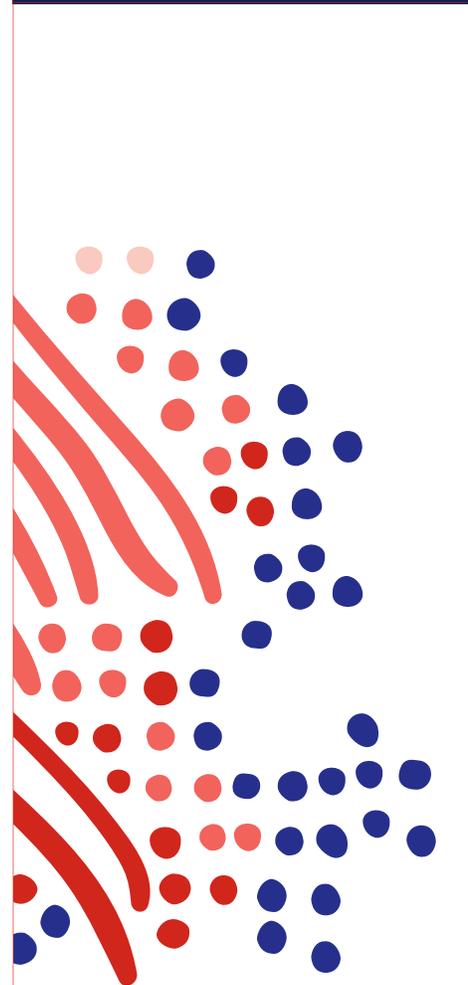
Generally, the IFR explains the adoption of a de minimis exemption from reductions in loan forgiveness (i.e., penalties) for failure to maintain the number of full-time-equivalent employees (FTEs), as well as wage level maintenance requirements, for PPP loans of \$50,000 or less.

Borrowers with affiliates that collectively received PPP loans of \$2 million or more cannot use the new form or new exemptions.

Background

The Paycheck Protection Program was enacted on March 27, 2020, as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P. L. 116-136), in order to provide employers with funds to continue operations and payment of wages during the COVID-19 pandemic. These loans are designed to be fully forgiven if used to cover specified expenses; e.g., at least 60 percent of such loans must cover payroll expenses.

The CARES Act originally provided for reductions in loan forgiveness (i.e., a penalty) if the employer did not maintain the average number of full-time-equivalent employees compared to either the period of February 15 through June 20, 2019, or the period from January through February 2020. The amount forgiven is also reduced to the extent that compensation for any individual making less than \$100,000 per year is reduced by more than 25 percent, compared to the most recent full quarter of employment before the covered period.



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The PPP also provided wage and FTE safe harbor measures which permitted employers to avoid a reduction in forgiveness amounts due to a significant decrease in employment and/or wage levels between February 15 and April 26, 2020, as long as the number of employees and wage levels were restored by a certain date.

On June 5, 2020, the Paycheck Protection Program Flexibility Act (PPPFA – P.L. 116-142) was signed into law to, among other things, extend the time period allowed for businesses to spend PPP loan proceeds. The PPPFA extended the safe harbor restoration date from June 30 to December 31, 2020, and clarified that loan forgiveness will not be reduced based on an inability to rehire employees, if the employer can document: 1) written offers to rehire individuals who were employees of the organization on February 15, 2020, 2) an inability to hire similarly qualified employees for unfilled positions by December 31, 2020, or 3) an inability to return to the same level of business activity as existed prior to February 15, 2020, due to compliance with COVID-19-related government guidance for sanitation, social distancing, or worker or customer safety requirements.

Forgiveness Reduction Waived for Loans of \$50,000 or Less

In accordance with the October 8 Interim Final Rule (IFR), qualifying PPP borrowers will not need to document compliance with the targeted FTE and wage level maintenance requirements.

Loan forgiveness amounts will not be reduced, even if FTE or wage levels decreased during or after the covered period, as long as the loan was \$50,000 or less, and the borrower, when combined with any affiliates, collectively received less than \$2 million.

Future Legislation May Also Modify or

Extend the Paycheck Protection Program

There are several legislative proposals in Congress to further expand, simplify and extend the PPP program, including proposals that could authorize a second PPP loan for qualifying businesses.

What to Do Now

Many borrowers who received PPP loans have already completed their specified “covered period” and spent the PPP loan proceeds and may be ready to submit the related forgiveness applications (SBA Form 3508, 3508EZ or 3508S).

The SBA began approving PPP forgiveness applications and remitting forgiveness payments to PPP lenders for PPP borrowers on October 2, 2020.

It is not urgent that forgiveness applications be submitted soon. As a reminder, under the PPPFA, loan repayments for any amounts not forgiven are not required until ten months after the expiration of a borrower’s covered period. Borrowers should check with their lenders directly to determine if they are prepared to accept forgiveness applications.

ADP clients can obtain the appropriate reports in their ADP solution and should gather other documentation demonstrating how PPP loan proceeds were used, including mortgage interest, rent payments and utilities.

ADP will continue to closely monitor federal legislation and guidance affecting PPP loans.

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For Further Information

Click [here](#) to view the simpler loan forgiveness application.

Click [here](#) to view the instructions for completing the simpler loan forgiveness application.

Click [here](#) to view the Interim Final Rule on the simpler forgiveness process for loans of \$50,000 or less.

For background on the Paycheck Protection Program forgivable loans and additional information, see

www.adp.com/covid-19.

For Treasury/Small Business Administration FAQs:

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

ADP Compliance Resources

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