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SBA Issues New Forgiveness Applications (and You Don't Need to Wait Until After December 31 to Apply)

On June 16, 2020, the Small Business Administration ("SBA") issued a revised Paycheck Protection Program ("PPP") [Loan Forgiveness Application](#) and a new [Loan Forgiveness Application Form EZ](#) ("Form EZ"). Both application forms incorporate the changes to the PPP resulting from the Paycheck Protection Program Flexibility Act ("Flexibility Act") that became effective on June 5, 2020. Pursuant to the Flexibility Act, the forgiveness covered period was extended to 24 weeks from the date the loan proceeds were disbursed unless a borrower with an existing PPP loan elects to use the 8-week period that part of the original PPP design.

Form EZ is an option for borrowers who fall into any of the following three categories:

- The borrower is a self-employed individual, independent contractor, or sole proprietorship who had no employees at the time of applying for the PPP loan and did not include any employee salaries in the payroll calculation to determine the loan amount in their application; OR
- The borrower did not reduce salaries or hourly wages of any employee by more than 25% during the forgiveness covered period and did not reduce the number of employees or average paid hours of employees during the forgiveness covered period; OR
- The borrower did not reduce salaries or hourly wages of any employee by more than 25% during the forgiveness covered period and was unable to operate during the covered period at the same business level as they were prior to February 15 due to compliance with requirements or guidance from the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or Occupational

Safety and Health Administration.

We note there are some differences in language used, or in some cases omitted, which may impact the ability of borrowers to use Form EZ. For example, instead of using the existing descriptions we have become familiar with to describe the reduction in average full time equivalent measure, Form EZ uses “reduce the number of employees or the average paid hours of employees” in determining if the borrower is eligible to use the form. Applying this phrase may be different than determining if there has been a reduction in average full-time equivalent employees (“FTE”). Form EZ further indicates that reductions relating to an inability to rehire employees or hire similarly qualified employees can be ignored in this analysis. There is no reference to ignoring reductions relating to the termination of an employee for cause or voluntary resignations or requests for reduced hours. If these scenarios are relevant to a borrower’s situation, Form EZ may not be available.

As the borrower is certifying that the salary/hourly wage reduction and the average FTE reduction do not apply, Form EZ excludes all the questions relating to these reductions. Form EZ consists of one page of questions, one page of certifications, and one page of documentation requirements.

For borrowers not lucky enough to be able to quickly fill out Form EZ, the standard Loan Forgiveness Application form for the most part aligns with the form distributed in late May except for updates relating to the Flexibility Act and the instructions being separated from the application. The covered period is either 8 weeks or 24 weeks. The Loan Forgiveness Application does not allow a borrower to pick a covered period that falls between eight weeks and 24 weeks.

One significant revision to the standard Loan Forgiveness Application relates to the original safe harbor for reductions to salaries/hourly wages or to average FTE that occurred between February 15, 2020 and April 26, 2020. In the original PPP design, these reductions did not need to be factored in the loan forgiveness amount if the reductions were “eliminated” (or the FTE or salaries/wages returned to what they were on February 15, 2020) before June 30, 2020. The Flexibility Act changed this date to

December 31, 2020. The revised application seems to provide more flexibility when the reductions must be eliminated to “the earlier of December 31, 2020, and the date this application is submitted.” Borrowers, whether they are electing an 8-week period or using the 24-week period, can establish that they have returned the FTE or salaries/wages to what they were on February 15, 2020 and file the forgiveness application on a specific date without needing to wait until the end of the year to see where the FTE or salary/wage detail lands to determine if the safe harbor applies.

Our team of attorneys are here to help borrowers maximize loan forgiveness. Additional guidance is expected as SBA receives feedback on the revised applications. For more information, contact [Shannon Kuhl](#), [Rebecca Moore](#), or any attorney in Frost Brown Todd’s [Financial Services](#) Industry Team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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