

ATTENTION Paycheck Protection Program Loan Recipients: REVISED Forgiveness Application Issued

SmithAmundsen Labor & Employment Alert
June 23, 2020

As written about previously, the Paycheck Protection Program Flexibility Act, while short in text, went to great lengths in helping borrowers extend their “covered period” and maximize forgiveness. As such, the previously issued forgiveness application needed to be revised.

Last week, on June 16, 2020, the SBA released a revised forgiveness application, a short-form and corresponding instructions for both. Generally, the short form is available for: 1) self-employed individuals; 2) those that did not reduce salaries by more than 25% and did not lay off any employees; or 3) those that did not reduce salaries by more than 25% and laid off employees, but did so because they were complying with CDC and OSHA guidance. The latter category is a new category of borrowers that no longer have to worry about prorated forgiveness. The revised applications can be found here:

Specifically, the new Safe Harbor that exempts a borrower from having to worry about maintaining employee headcount is available for a borrower, that in good faith, is able to document the following:

...that it was unable to operate between February 15, 2020 and the end of 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 precision, or the Occupational Safety and Health Administration, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

In addition to the above, the revised forgiveness application and corresponding regulations and instructions clarify that maximum “payroll costs” are revised to the following: **Prior to PPP Flexibility Act Pursuant to PPP Flexibility Act** Self-employed/sole proprietors/ owners Cash Compensation limited to: **\$15,385** (for an 8-week covered period) Cash Compensation limited to: **\$15,385** (for an 8-week

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covered period) **OR \$20,833** (representing 2.5 months of compensation with a 24-week covered period elected) Employees Cash Compensation limited to: **\$15,385** (for an 8-week covered period) Cash Compensation limited to: **\$15,385** (for an 8-week covered period) **OR \$46,154** (representing 24-weeks of payroll with a 24-week covered period elected)

Borrowers that intend to rely upon the new Safe Harbor should work with knowledgeable counsel to ensure adequate documentation is prepared for reference in the event an SBA audit occurs at a later date.

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