

## Revised SBA Loan Forgiveness Applications

In a previous article, we covered the positive changes that were made to the PPP by the Paycheck Protection Plan Flexibility Act (“Flexibility Act”). In response to the Flexibility Act, the SBA withdrew its previous loan forgiveness application and issued two new applications. The first of these new applications is the Form 3508EZ, which simplifies the forgiveness process by reducing the amount of information and documentation required to be submitted. The second application is more burdensome than the Form 3508EZ but reflects the changes made by the Flexibility Act. With this backdrop, this article will primarily focus on the documentation required for each form, as the law has been addressed in two previous articles on the Campbell & Bissell, PLLC website.

### **Form 3508EZ**

First and foremost, prior to using Form 3508EZ a borrower must be considered eligible. A borrower is considered eligible only if one of the following three requirements is met:

1. The borrower is self-employed, an independent contractor, or sole proprietor who had no employees at the time of the PPP loan *application* **AND** did not include any employee salaries *in the computation* of average monthly payroll in the application<sup>1</sup>; **OR**
2. The borrower did not reduce annual salary or hourly wages of any employee<sup>2</sup> by more than 25% during the Covered Period or the Alternative Payroll Covered Period (“APCP”) compared to the period between January 1, 2020 and March 31, 2020 **AND** did not reduce<sup>3</sup> the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period; **OR**
3. The borrower did not reduce annual salary or hourly wages of any employee by more than 25% during the Covered Period or the APCP compared to the period between January 1, 2020 and March 31, 2020 **AND** the 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 HHS, CDC, or

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<sup>1</sup> Some readers may wonder how the borrower could have any employee salaries in the computation of average monthly payroll if the borrower could not have any employees at the time of the loan application. In this respect, the SBA ambiguously references two time periods: (1) the time of the loan *application*; and (2) the preceding 1-year period, which was used to calculate the maximum loan amount for the application. If the borrower had *no* employees at the time of the application and *did not* include any employee salaries from the preceding 1-year period to calculate the average monthly payroll *for the application*, then they meet this requirement so long as they are also self-employed, an independent contractor, or a sole proprietor.

<sup>2</sup> “Employee” for purposes of the first statements of requirements 2 and 3 means those who did not receive wages or salaries exceeding an annualized rate of \$100,000 in any single period during 2019.

<sup>3</sup> A borrower may ignore reductions that arose from an inability to rehire or when an employee refused to have hours restored.

OSHA, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirements related to COVID-19.

If you are eligible to use this form, which only consists of two pages (and a third if you provide your demographic information), then the documentation you need to submit is drastically reduced as compared to the previous loan forgiveness application.

The documentation required for “payroll costs,” includes:

1. Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees;
2. Tax forms for the periods that overlap with the Covered Period or the APCP, which include payroll tax filings reported or that will be reported to the IRS, and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported;
3. Payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that were included in the forgiveness amount; and
4. If you used this form pursuant to the second requirement (*i.e.*, no reductions), the average number of full-time equivalent employees on payroll employed on January 1, 2020 and at the end of the Covered Period.

For “nonpayroll costs,” which include covered mortgage interest payments, covered rent or lease payments, and covered utility payments, you need to submit:

1. Documentation verifying the existence of these obligations prior to February 15, 2020;
2. Mortgage Interest Payments: A copy of the lender amortization schedule and receipts or cancelled checks verifying eligible payments from the Covered Period; or lender account statements from February 2020 and the months of the Covered Period through one month after the end of the Covered Period verifying interest amount and eligible payments.
3. Rent or Lease Payments: A copy of the lease agreement and receipts or cancelled checks verifying eligible payments from the Covered Period; or lessor account statements from February 2020 and from the Covered Period through one month after the end of the Covered Period verifying eligible payments.

4. Utility Payments: A copy of invoices from February 2020 and those paid during the Covered Period and receipts, cancelled checks, or account statements verifying those eligible payments.

As you can clearly see, the documentation required is substantially less than what was previously required.

In addition to the foregoing documentation, the borrower must *retain* (vice submit) other documentation for a period of six years after the loan is forgiven or repaid in full. These include:

1. Documentation supporting the certification that annual salaries or hourly wages were not reduced by more than 25% during the Covered Period or the APCP as compared to the period between January 1, 2020 and March 31, 2020. The borrower must include payroll records that separately list each employee and show the amounts paid during January 1, 2020 through March 31, 2020 and the amounts paid during the Covered Period or APCP;
2. Documentation regarding employee job offers and refusals, refusals to accept restoration of reduction in hours, firings for cause, voluntary resignations, written requests by an employee for reductions in work schedule, and any inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020;
3. Documentation supporting the certification of requirement 2 (on page 1 of this article) to be eligible to use this form. This documentation must include payroll records that separately list each employee and show the amounts paid to each employee between January 1, 2020 and the end of the Covered Period;
4. Documentation supporting the certification of statement 2 in requirement 3 (on page 1 of this article) to be eligible to use this form. This documentation must include copies of the applicable requirements for each borrower location and relevant borrower financial records; and
5. All records relating to the borrower's PPP loan, including documentation submitted with the application, documentation which supports the necessity to apply for the loan and eligibility, documentation necessary to support the loan forgiveness application, and documentation demonstrating material compliance with PPP requirements.

This Form 3508EZ should significantly reduce the time and resources a borrower allocates to the loan forgiveness application.

### **The Second Loan Forgiveness Application**

If you are not eligible to use the Form 3508EZ, then you must use the revised loan application forgiveness form. Under this form, the borrower must submit the following documentation:

1. The same documentation required under Form 3508EZ for “payroll costs” and covered “nonpayroll costs”; and
2. Fulltime Equivalent (“FTE”) employee documentation showing:
  - a. The average number of FTE employees on payroll per week employed by the borrower between February 15, 2019 and June 30, 2019 if this comparative period was used in Schedule A, Line 11;
  - b. The average number of FTE employees on payroll per week employed by the Borrower between January 1, 2020 and February 29, 2020 if this comparative period was used in Schedule A, Line 11; or
  - c. If you are a seasonal employer, the average number of FTE employees on payroll per week employed between February 15, 2019 and June 30, 2019; between January 1, 2020 and February 29, 2020; or any consecutive 12-week period between May 1, 2019 and September 15, 2019.

The documentation for FTE employees may include payroll tax filings that have been or will be reported to the IRS, and state quarterly business and individual employee wage reporting and unemployment insurance tax filings that have been or will be reported.

In addition, similar to the Form 3508EZ, the borrower must maintain but is not required to submit, the following documentation:

1. Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1, including the “Salary/Hourly Wage Reduction” calculation if applicable;
2. Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 2; specifically, that each listed employee received during any single period in 2019 compensation at an annualized rate of more than \$100,000;
3. Documentation regarding employee job offers and refusals, refusals to accept restoration of reduction in hours, firings for cause, voluntary resignations, written

requests by an employee for reductions in work schedule, and any inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020;

4. Documentation supporting the certification of statement 2 in requirement 3 (on page 1 of this article) to be eligible to use Form 3508EZ. This documentation must include copies of the applicable requirements for each borrower location and relevant borrower financial records;
5. Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor 2”; and
6. All records relating to the borrower’s PPP loan, including documentation submitted with the application, documentation which supports the necessity to apply for the loan and eligibility, documentation necessary to support the loan forgiveness application, and documentation demonstrating material compliance with PPP requirements.

### **Conclusion**

Although the loan forgiveness process may be stressful and time consuming, it is necessary to approach the application with a diligent and industrious mindset. If you encounter any difficulty while completing either of the loan forgiveness applications, please do not hesitate to contact us at Campbell & Bissell, PLLC. We are here to help with any of your needs and have knowledgeable attorneys to help you navigate the new applications. In the end, our goal is the same as yours: we want you to reap the most benefits possible from the PPP.