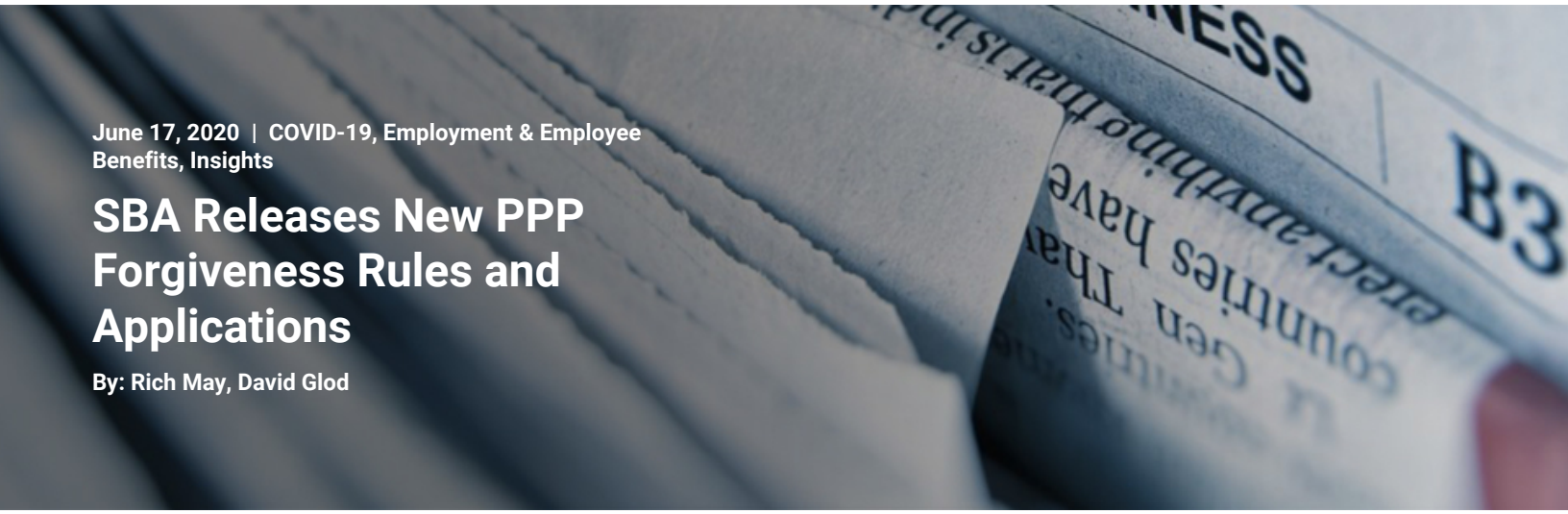

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SBA Releases New PPP Forgiveness Rules and Applications

By: Rich May, David Glod

The Small Business Administration has filed a new Interim Final Rule, scheduled to be published on June 19, 2020, implementing changes to the PPP loan program enacted by the PPP Flexibility Act.

The SBA also released a new version of the loan forgiveness application form, updated in line with the new rule and simplified to address confusion caused by certain aspects of the old form. Finally, the SBA issued an even further simplified "EZ" version of the form (and instructions) for borrowers that are self-employed individuals, independent contractors, or sole proprietors with no employees; or for borrowers who have employees but did not make reductions in employee headcounts or salaries that would reduce their eligibility for forgiveness. It does not appear that updated instructions for the general forgiveness form (as opposed to the "EZ" form) have been released yet.

The rule and forms answer a key question that many borrowers have asked: now that the "covered period" during which PPP loan proceeds are to be spent in order to qualify for forgiveness has been extended from 8 weeks to 24 weeks, is the amount of payroll eligible for forgiveness similarly increased? The previous forgiveness application form indicated that cash compensation to employees was capped at $15,385 per employee, representing 8 weeks of pay for someone earning $100,000 per year. The new guidance explains that if the borrower elects to use the 24-week covered period under the PPP Flexibility Act, the per-employee cap on cash compensation will indeed be increased to $46,154. The borrower's payments for certain benefits to employees (but not owners) including health care, retirement contributions, and state payroll taxes are also eligible for forgiveness even if they exceed that amount.

With regard to self-employed individuals including independent contractors and sole proprietors, the cap on owner compensation replacement is 2.5 months' worth of 2019 net profits if using a 24-week covered period. That compensation is also subject to a $100,000 annualized cap, or $20,833. For a one-person business earning over $100,000 per year, this should generally be the same amount in which they applied for the PPP loan.

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Note that some lenders are encouraging borrowers not to rush to file forgiveness applications, emphasizing that borrowers have 10 months from the end of their covered period to file. Filing an incomplete application may slow down the process, and there may not be a way to amend a filing once the lender submits it to the SBA. This may be sound advice as the rules and guidance in this area continue to change.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys J. Allen Holland, Jeffrey Loeb, Frank Gaeta, or David Glod.

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