

PPP Loan Forgiveness Application Released and Related Guidance

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On Friday May 15, 2020 the Small Business Administration (SBA) released the Paycheck Protection Program (PPP) Loan Forgiveness Application (the Application). The Application and instructions are available directly from the SBA **here.**

The Application provides line by line instructions that walk Applicants through the various calculations necessary to determine their forgiveness amount and to complete the Application. In the process, it addresses a significant number of questions Applicants have had with respect to how to determine salary, reductions, counting full time equivalent employees, and other issues.

The Covered Eight-Week Period

In addition, Applicants are afforded some flexibility in determining the start of the eight-week period used to determine forgivable payroll amounts. Original guidance suggested that the eight-week clock for the "covered period" would begin automatically on the date funds were disbursed. This is still the default, but there is an alternative Payroll Covered Period that Applicants can elect to use if the Applicant's pay period is biweekly or more frequently. In that case, the alternative payroll covered period may begin at the start of the next pay period before beginning the eight-week clock for determining PPP funds used for payroll purposes. This does not appear to be available for Applicants that pay less frequently such as twice monthly or monthly. However, all Applicants are allowed to include any amounts paid towards payroll during the applicable eight-week period (including amounts earned by an employee for work prior to the eight-period if a pay period overlaps, **as well** as any amounts that are earned by employees during the eight-week period that are not paid, so long as they are paid on or before the occurrence of the Applicant's next regular payroll date). All other non-payroll expenses must generally be incurred during the covered period and prepayments are generally not permitted. However, if the non-payroll expense was incurred during the covered period but not paid during the covered period, the expense can be included in the forgiveness amount if the expense is paid in the next regular billing cycle.

Forgiveness Reduction Calculation Details:

The forgiveness application confirms that the 75% payroll requirement is not a cliff that requires 75% of the entire principal be spent on payroll costs during the eight-week period. Rather, it serves as a cap on the amount of available forgiveness that equals the amount spent on payroll costs during the eight-week period, plus 1/3 of that amount that is spent on other eligible expenses.

The SBA has also provided additional detail related to the calculation of reductions in available forgiveness due to either salary reductions or reductions in the number of full time equivalent employees. A full time employee is any individual who works 40 or more hours during the applicable period. For individuals that average less than 40 hours per work week, Applicants are permitted to either calculate their number of FTEs by dividing part time employees average hours by 40 and rounding to the nearest 0.1 FTE or calculating all employees that average less than 40 hours as 0.5 FTE, provided that the Applicant must be consistent throughout the application in using these approaches.

It also appears that the wage reduction does not apply to individuals that are not employed during the eight-week period, although they will still count against the FTE reduction. However, the SBA is applying the dollar for dollar wage reduction to eligible forgiveness first, and then applying the percentage reduction second in an Applicant friendly method of calculating these two limitations in situations where both apply.

The SBA has also provided exceptions to the FTE reduction calculation to the extent an employee (a) rejects a good faith written offer to rehire during the eight-week period, (b) is fired for good cause, (c) resigns voluntarily, or (d) voluntarily requested and received a reduction in hours. However, the qualifying exemption goes away if the excepted employee's position is filled by a new employee. In any of these situations the reduction does not reduce the Applicant's loan forgiveness.

June 30 Safe Harbor for Forgiveness Reductions

The wage reduction safe harbor is applied on an individual basis and eliminates any reduction if the rate of pay reduction is eliminated provided that the Applicant has restored every applicable individual to at least 75% of their prior pay by June 30, 2020.

The FTE restoration safe harbor on the other hand is applied companywide and requires 100% restoration to FTE levels that existed during the earlier comparison period. This is anticipated to receive additional guidance.

Recordkeeping Requirements

Applicants are required to retain all documentation relating to the PPP and the Application for six years after the date the loan is forgiven or repaid and permit the SBA to access the records upon request. An Applicant must also retain documentation supporting the borrower's certifications as to necessity and eligibility.

Recipients of PPP funds should use the Application and instructions as a guide over the coming weeks to ensure they are maximizing the amount of the PPP loan that will be forgiven as well as gathering documentation to support their eventual forgiveness applications.

SB Provides Dynamic Forgiveness Application Files

To assist our clients, we have created a dynamic PDF version of the Application that automatically calculates various provisions to simplify the process for Applicants. In addition, we have created an interactive excel spreadsheet to assist clients in creating the individualized employees Worksheet to

Schedule A of the Application. This excel sheet includes in-line instructions and guidance from the Application to allow you to complete the document as well as expand it to cover all employees. We recommend that Applicants use the PDF version for the primary forgiveness application and Schedule A which will be submitted to the Applicant's lender and then most Applicants should use the excel version instead of the PDF Worksheet to Schedule A.

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