

PUBLICATION

Small Business Administration Issues Initial PPP Loan Forgiveness Application

Authors: Donald Jeffrey Wagner

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On Friday, May 15, 2020, the Small Business Administration (SBA) issued a Paycheck Protection Program Loan Forgiveness Application form (the "Forgiveness Application"), which provides the first guidance on how the SBA will require borrowers to seek forgiveness for Paycheck Protection Program (PPP) loans. The Forgiveness Application provides the SBA's initial perspective on the qualifications for loan forgiveness under the CARES Act.

While the Forgiveness Application provides good perspective for how SBA intends to handle this process, borrowers should be aware that the SBA revised the loan application form for PPP loans after initial issuance. Further, recent reports indicate that Congress and the Administration are considering changes to the PPP to include, among other changes, extending the eight-week covered period for the use of the PPP loan funds, removing the requirement that business owners use at least 75 percent of the funds for payroll, and liability protections for business owners. If these amendments are adopted, the Forgiveness Application will need to be changed to correspond with the changes in the law. Nonetheless, the Forgiveness Application available now includes valuable guidance for how borrowers should track expenses and collect documentation to prepare to make the case for forgiveness. We have summarized some of those key points here.

Requires Identification of Loans Over \$2 Million to Affiliated Entities

The Forgiveness Application includes a requirement that each borrower indicate whether it and its affiliates have PPP loans, in the aggregate, of more than \$2 million. As indicated in our [May 13, 2020 Alert](#), the SBA will be performing forgiveness review (including eligibility) on loans of more than \$2 million in the aggregate to affiliated entities. The lender(s) making the loan(s) will be responsible for forgiveness review below the \$2 million threshold.

Allows Forgiveness for Payroll Payments Made and Payroll Payments Incurred

Several borrowers have expressed concern about their payroll periods not aligning perfectly with the eight-week "covered period" for PPP loans. Specifically, borrowers were concerned that they would "incur" payments during the covered period that were not actually "paid" until after the eight-week covered period for forgiveness had ended. The Forgiveness Application confirms that borrowers can be forgiven for those amounts that were incurred as payroll expense even if the costs were not actually paid during the eight-week period.

Furthermore, the Forgiveness Application gives borrowers a choice of two separate forgiveness periods to calculate payroll: (1) the eight-week (56-day) Covered Period as described in the CARES Act; or (2) an Alternative Payroll Covered Period that begins on the first day of the borrower's first pay period following its PPP loan disbursement date. The SBA has provided the Alternative Payroll Covered Period has an administrative convenience for addressing the payments incurred and payments made calculation.

Calculations for Loan Forgiveness Reduction Based on Decrease in Employees and Decreases of Individual Pay by More than 25 Percent

Loan Forgiveness Reduction Based on Decrease in Employees

As we discussed in our [April 14, 2020 Alert](#), the CARES Act requires that PPP loan forgiveness be reduced for borrowers that have certain reductions in employee headcount. Specifically, to determine the reduction in loan forgiveness on this basis, the PPP requires borrowers to use a ratio determined by dividing the average number of full-time equivalent employees (FTEs) per month during the eight-week period following PPP loan disbursement by, at the discretion of the borrower, either:

- The average number of FTEs per month during the period beginning February 15, 2019 and ending on June 30, 2019; or
- The average number of FTEs per month during the period beginning January 1, 2020 and ending on February 29, 2020; or
- For seasonal employers only, any 12 consecutive week period between May 1, 2019 and September 15, 2019.

The ratio represents the percentage of the PPP loan that is eligible for forgiveness.

Significantly, the Forgiveness Application defines for the first time how SBA will require borrowers to calculate FTEs:

For each employee, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth. The maximum for each employee is capped at 1.0. A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used at the election of the Borrower.

The Forgiveness Application also provides detailed instructions and a worksheet to help borrowers perform the loan forgiveness reduction calculation.

Loan Forgiveness Reduction Based on Decrease of Salary of More than 25 Percent for Those Who Made Less Than an Annualized Amount of \$100,000 in 2019

The CARES Act further provides that loan forgiveness will also be reduced for each employee whose salary or wages is decreased by more than 25 percent during the eight-week period after loan origination as compared to that employee's salary and wages for the full quarter before the eight-week period. This analysis applies only to those employees who did not receive, during any single pay period in 2019, wages or salary at an annualized rate of pay higher than \$100,000.

The Forgiveness Application includes a worksheet to assist borrowers to make the required calculations. Borrowers should review the Forgiveness Application now to prepare for seeking forgiveness later.

Forgiveness Application Includes Additional Certifications

The original loan application required borrowers to make several certifications to obtain the loan - most importantly, certifications related to [SBA's affiliation rules](#) and [the need for the loan](#). SBA's evolving guidance has made borrowers well aware of the importance of certification requirements.

The Forgiveness Application requires, among other things, the borrower to certify that the PPP loan was used only for authorized uses, the forgiveness reduction calculations were made accurately and that the SBA can request additional documentation to confirm the loan uses and forgiveness calculations.

Documentation Requirements

The Forgiveness Application also includes a detailed list of documents that borrowers are required to submit to the lender to seek forgiveness and a detailed list of documents that each borrower must maintain, but is not required to submit.

Documents That Borrowers Must Submit With Their Applications

Borrowers are required to submit the following summary of documents with their application, which they should ensure they are compiling and organizing now to prepare for submitting the application:

- **Payroll Documentation** – There must be documentation confirming the eligible cash compensation and non-cash benefit payments of the following:
 - Bank account statements or third-party payroll service providers documentation of compensation paid to employees
 - Tax forms that overlap with the Covered Period or the Alternative Payroll Covered Period. The forms include the following:
 - Payroll tax filings that have been or will be reported to the IRS
 - State quarterly business and employee wage reporting filings
 - Payment receipts, cancelled checks or account statements showing employer contributions to health or retirement plans
- **FTE Documentation** – The borrower must provide, at its election, one of the following:
 - "the average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019;
 - the average number of FTE employees on payroll per month employed by the Borrower between January 1, 2020 and February 29, 2020; or
 - in the case of a seasonal employer, the average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019; between January 1, 2020 and February 29, 2020; or any consecutive twelve-week period between May 1, 2019 and September 15, 2019."
- **Nonpayroll Documentation** – The borrower must provide documentation that verifies the existence of certain non-payroll services prior to February 15, 2020. The documentation may include copies of the following:
 - An amortizations schedule from the lender showing eligible mortgage interest payments
 - A copy of the lease pursuant to which the borrower has made rent payments
 - Copies of utility bills and cancelled checks for any business utility payments

Documents That Borrowers Must Maintain, But Are Not Required to Submit

As noted above, the Forgiveness Application requires borrowers to certify they understand that the SBA may request additional information for purposes of evaluating the borrowers' eligibility for the PPP loan and for loan forgiveness. With that in mind, the Forgiveness Application requires borrowers to maintain information for the SBA's review, even though they do not need to submit that documentation with their original Forgiveness Applications. The documents that fall into this category are summarized as follows:

- Documents verifying the listing of each employee in Schedule A Worksheet Table 1, including any "Salary/Hourly Wage Reduction" calculation if needed

- Documents confirming the listing of the employees listed on Schedule A Worksheet Table 2, specially any employee who received over \$100,000
- Documentation of any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by employees for reductions in work schedule
- Documentation supporting "FTE Reduction Safe Harbor" of the PPP Schedule A Worksheet

Borrowers would be wise to maintain all of the submitted and unsubmitted documents for several years after the loan is forgiven because the government does have authority to conduct later inspector general investigations and other investigations related to government programs, even after the applicant's participation in that program ends.

Conclusion

It would not be surprising if the Forgiveness Application is further changed before borrowers submit it. However, the issuance of this document provides the first significant guidance about forgiveness and provides good direction on SBA's likely intent with this process. If you have specific questions on this guidance, please contact [Jeff Wagner](#). For more information and general guidance on how to address other legal issues related to COVID-19, please visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.