

SBA Releases Borrower PPP Loan Forgiveness Application Including Step-by-Step Calculation Instructions

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On Friday evening, the Small Business Administration (“SBA”) and Treasury published the long-awaited Paycheck Protection Program (“PPP”) Loan Forgiveness Application. The form also provides for an Alternative Payroll Covered Period and includes details regarding how a reduction to employee and compensation levels during the covered period will affect the amount eligible for forgiveness.

Although still not crystal clear, the Loan Forgiveness Application appears to provide some guidance that the costs must be either incurred or paid (but are not required to be both incurred and paid) during the Covered Period (or the Alternative Payroll Covered Period). As a result, we think this may make it easier for borrowers to hit the 75% threshold for payroll costs because it provides one additional pay period for the purposes of the calculation. In addition, the Loan Forgiveness Application clarifies that covered rent obligations include leases of not only real property, but personal property.

Eligible Payroll Costs. Borrowers are generally eligible for the payroll costs paid and payroll costs incurred during the eight-week (56-day) Covered Period (or the Alternative Payroll Covered Period) (“payroll costs”). Payroll costs are considered paid on the day that paychecks are distributed or the Borrower originates an ACH credit transaction. Payroll costs are considered incurred on the day that the employee’s pay is earned. Payroll costs incurred but not paid during the Borrower’s last pay period of the Covered Period (or the Alternative Payroll Covered Period) are eligible for forgiveness if paid on or before the next regular payroll date. Otherwise, payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period). For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the covered period. Count payroll costs that were both paid and incurred only once.

Eligible Non-Payroll Costs. Non-payroll costs eligible for forgiveness consist of:

1. covered mortgage obligations: payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020 (“business mortgage interest payment”);
2. covered rent obligations: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020 (“business rent or lease payments”); and
3. covered utility payments: business payments for a service for the distribution of electricity, gas, water, transportation, telephone or internet access for which service began before February 15, 2020 (“business utility payments”).

An eligible non-payroll costs must be paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period. Eligible non-payroll costs cannot exceed 25% of the total forgiveness amount. Count non-payroll costs that were paid and incurred only once.

Notably, the new guidelines provide borrowers with the option to use an *Alternative Payroll Covered Period* described as follows:

Alternative Payroll Covered Period: For administrative convenience, Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan Disbursement Date (the “Alternative Payroll Covered Period”). For example, if the Borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, June 20. Borrowers who elect to use the Alternative Payroll Covered Period must apply the Alternative Payroll Covered Period wherever there is a reference in this application to “the Covered Period or the Alternative Payroll Covered Period.” However, Borrowers must apply the Covered Period (not the Alternative Payroll Covered Period) wherever there is a reference in this application to “the Covered Period” only.

It is worth noting that the Alternative Payroll Covered Period applies only to payroll costs, meaning the “covered period” for purposes of non-payroll expenses still begins on the same day as the PPP Loan Disbursement Date.

The form also provides some much needed clarity regarding how the SBA intends to calculate the average full-time equivalency (“FTE”) during the Covered Period or Alternative Payroll Covered Period. The form provides as follows:

Average FTE: This calculates the average FTE during the Covered Period or the Alternative Payroll Covered Period. 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.

As discussed here, the SBA previously issued guidance clarifying that any positions for which the borrower made a good-faith written offer to rehire an employee during the Covered or Alternative Covered Period, which was rejected by the employee, would not reduce borrower’s loan forgiveness.

The Loan Forgiveness Application also includes the following additional **FTE Reduction Exceptions** for any employees who during the Covered or Alternative Payroll Covered Period:

1. were fired for cause,
2. voluntarily resigned, or
3. voluntarily requested and received a reduction of their hours.

The PPP Loan Forgiveness Application has also provided some clarity regarding the exemption from forgiveness reduction if employees laid off between February 15 and April 26 are rehired by June 30. The language from the form states as follows:

FTE Reduction Safe Harbor: A safe harbor under applicable law and regulation exempts certain borrowers from the loan forgiveness reduction based on FTE employee levels. Specifically, the Borrower is exempt from the reduction in loan forgiveness based on FTE employees if both of the following conditions are met: (1) the Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and (2) the Borrower then restored its FTE employee levels by not later than June 30, 2020 to its FTE employee levels in the Borrower's pay period that included February 15, 2020.

While it was not clear before, the language above clarifies that employers who reduced their FTE levels from February 15 to April 26 will be *entirely exempt* from forgiveness reduction based on FTE levels if their February 15, 2020 FTE level is restored by June 30, 2020.

The instructions in the PPP Loan Forgiveness Application have also clarified the safe harbor for salary/hourly wage reduction. The steps to determine if the **Salary/Hourly Wage Reduction Safe Harbor** is met are as follows:

1. Enter the annual salary or hourly wage as of February 15, 2020: _____.
2. Enter the average annual salary or hourly wage between February 15, 2020 and April 26, 2020:
_____.
3. Enter the average annual salary as of June 30, 2020: _____.

Assuming b. is less than a., if c. is greater than or equal to a., the Salary/Hourly Wage Reduction Safe Harbor has been met and the reduction amount for that employee will be 0.

Finally, in addition to step-by-step instructions for forgiveness calculations, the PPP Loan Forgiveness Application lays out exactly which documents each borrower must submit with its Forgiveness Application. While the various safe harbor provisions provide some assurances to Borrowers as to forgiveness, the Forgiveness Application should be carefully reviewed and completed prior to submitting to your lender.