

May 29, 2020

Summary of PPP Loan Forgiveness Application and Instructions (Issued May 15, 2020)

On May 15, 2020, the Small Business Administration (“SBA”) issued the long awaited Paycheck Protection Program (“PPP”) Loan Forgiveness Application (the “Application”) and associated instructions (“Instructions”). The Application consists of four parts: (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; (3) PPP Schedule A Worksheet; and (4) Optional Demographic Information Form. Items (1) and (2) must be submitted to the applicable lender. In addition to specific documentation requirements and numerous borrower certifications regarding its use of the PPP loan proceeds, the Application and Instructions answer some questions that had previously been unclear as to loan forgiveness, including the following:

Alternative Payroll Covered Period

- Previous guidance provided that the eight-week period during which eligible expenses are forgivable under the PPP begins on the date a lender disburses the PPP loan funds to a borrower; however, the Application provides an alternative eight-week period beginning on the first day of the first pay period after the loan disbursement date.

Covered Payroll and Non-payroll Costs

- There has been confusion regarding the CARES Act’s requirement that eligible expenses must be incurred and paid within the covered eight-week period. The Instructions provide that payroll costs are (a) incurred on the day the employee’s pay is earned and (b) paid on the day the borrower distributes paychecks or originates an ACH transaction. Addressing borrower concerns regarding payroll costs incurred but not yet paid as of the last day of the eight-week period, the Instructions provide that payroll costs incurred but not paid as of the last day of the eight-week period are eligible for forgiveness if they are paid on or before the next regular payroll date.
- The Instructions confirm prior guidance that cash compensation is limited to \$100,000 per employee on an annualized basis, or \$15,385 per employee. Many employers have questioned whether they can pay bonuses to employees within the covered period and include those bonuses as eligible payroll expenses. Although the Application and Instructions do not specifically address this issue, it seems likely that a bonus related to work performed within the eight-week covered period would be eligible up to the \$15,385 cap per employee.
- Regarding non-payroll costs, the Instructions confirm that mortgage interest payments, rent obligations and utility payments are included as eligible expenses under the PPP, and also clarify that “rent” applies to real property; it was previously unclear whether payments on personal property leases would be eligible.

Full-Time Equivalents

- The Application and Instructions, including Schedule A of the Application, provide additional information on forgiveness penalties for FTE reduction and also include a new exemption for FTE’s that an employer has attempted to rehire or for employees that were fired for cause, voluntarily resigned, or voluntarily received a reduction in hours.

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- The Instructions help clarify how the number of FTE's is calculated: the FTE value is the average number of hours paid per week, divided by 40, and rounded to the nearest tenth, but not to exceed 1.0.

Salary/Hourly Wage Reductions

- The Application and Instructions contain additional specificity on calculating the time periods being compared for purposes of the PPP's reduction in eligible loan forgiveness if the borrower reduces salaries or hourly wages by more than 25% for any employee (other than employee's receiving \$100,000 or more in annualized compensation in any 2019 pay period).

Borrower Certifications

The Application contains express and implied borrower certifications. Specifically, it includes places for the borrower to insert its calculations of the costs that it has incurred and for which it will seek forgiveness. Additionally, the Application includes an express set of "Representations and Certifications on Behalf of the Borrower," which require an authorized representative of the borrower to certify that the borrower:

- has incurred the proper type and dollar amounts of costs for which forgiveness is being sought
- took appropriate reductions from those amounts where it (a) decreased full-time equivalent employees and/or (b) there were applicable salary/hourly wage reductions
- has included no more than 25% of the requested amount for forgiveness for non-payroll costs
- did not "knowingly ... [use loan funds] for unauthorized purposes"
- accurately verified its payments for which forgiveness is being sought
- has and will submit to the lender information consistent with what it has and will submit to the IRS, state and workforce agencies
- agrees to provide additional information where requested by the SBA for purposes of evaluating its eligibility for the loan and loan forgiveness or risk being found ineligible for the loan and denied loan forgiveness.

The form also requires a borrower to certify that it has provided accurate and complete information and done so in good faith, without any intent to mislead, and that it is aware of the significant penalties it may be subject to in the event it is determined that it has failed to comply with the requirements.

For additional information please contact:



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