

Application for PPP Loan Forgiveness ... Now What?

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Certain provisions of the coronavirus/COVID-19 economic stimulus legislation are subject to the issuance of government regulations and other government action; thus, certain details regarding the legislation may be clarified or added.

On Friday, May 15, 2020, the SBA released its Paycheck Protection Program ("PPP") **Loan Forgiveness Application** (the "Forgiveness Application"). The Forgiveness Application is a universal template that is to be completed by all borrowers and submitted to their PPP lender when it comes time for forgiveness. The Forgiveness Application consists of four (4) components: (i) the PPP Loan Forgiveness Calculation Form (the "Form"), which consists of 11 lines that, when calculated, results in the amount of forgiveness a borrower will be eligible for; (ii) PPP Schedule A (which provides some of the calculations for the Form); (iii) the PPP Schedule A Worksheet (which provides some of the calculations for PPP Schedule A); and (iv) the (optional) PPP Borrower Demographic Information Form. The forgiveness aspect of the PPP has been the most attractive, and unknown, aspect of the program. For more information on forgiveness, please see our prior client alert [here](#).

The top five (5) takeaways from the Forgiveness Application are outlined below:

1. The introduction of an Alternative Payroll Cover Period, which gives the Borrower flexibility to move its covered period to coincide with their next payroll cycle.
2. The inclusion of both interest payments for business obligations on personal property

(i.e. loans for equipment), as well as lease payments for business equipment (i.e. copy machines, printers, postage meters, etc.) as eligible non-payroll costs.

3. The shift from the previous paid **and** incurred concept to the more flexible paid **or** incurred.
4. Clarification on what constitutes a full-time equivalent ("FTE") employee, which is an employee who works at least 40 hours a week (there was some speculation that a FTE was someone who worked at least 30 hours a week previously).
5. The addition of a certification which states that the SBA may request additional information for the purposes of evaluating the Borrower's eligibility for the PPP loan and for loan forgiveness, and that the Borrower's failure to provide information requested by the SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower's loan forgiveness application.

Forgiveness Calculation: Step 1 (Lines 1-4)

Line 1 of the application asks for the payroll costs. Lines 2-4 ask for the qualifying non-payroll costs¹ that the business has spent over the eight-week period since it received its PPP funds. Some BIG (and frankly new) takeaways from Lines 1-4:

- a) For forgiveness purposes (as well as administrative convenience), the SBA has introduced the "Alternative Payroll Cover Period" whereby a borrower with biweekly (or more frequent) payroll may elect to calculate payroll costs using the eight-week (56 day) period

¹ For clarity, qualifying, forgivable non-payroll costs include (1) business mortgage interest payments during the Covered Period for any business mortgage obligation on real or personal property incurred before February 15, 2020 (do not include prepayments); (2) business rent or lease payments for real or personal property during the Covered Period, pursuant to lease agreements in force before February 15, 2020; and (3) business utility payments during the Covered Period, for business utilities for which service began before February 15, 2020.

that begins on the first day of their first pay period following their PPP loan disbursement date (i.e. the date a borrower receives PPP loan proceeds).² **However, Borrowers must apply the Covered Period (not the Alternative Payroll Covered Period) wherever there is a reference in the application to the "Covered Period" only.**³

b) Line 3 of the Forgiveness Application allows for the borrower to include business lease payments for personal property (i.e. business equipment leases) in the calculation of rent.

Forgiveness Calculation: Step 2 (Line 5-7)

a) The next step is a reduction in the forgiveness amount if you have reduced pay for employees greater than 25 percent or if you have not brought back the same number of full-time equivalent employees.⁴

b) With respect to the FTE rules, now, as articulated by the Forgiveness Application, when calculating the number of average 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 a fraction, rounded to the nearest tenth, for employees who work fewer hours may be used at the election of the Borrower.⁵

c) The Borrower does not have to count employee reductions which occurred as a result of any of the following: (1) any positions for which the Borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee; and (2) any employees who during the Covered Period or the Alternative Payroll Covered Period (a) were fired for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours. In all of these cases, include these FTEs in the Form only if the position was not filled by a new employee. Any FTE reductions in these cases do not reduce the Borrower's loan forgiveness.

d) Line 6 asks the borrower to add lines 1-4, subtract line 5, enter the total and, if this amount is less than zero, enter a zero. Line 7 asks the borrower to "[e]nter the number from PPP Schedule A, line 13." Schedule A, Line 13 (the FTE reduction quotient) takes the Total Average FTE and divides that number by the Average FTE during the Borrower's chosen reference period (i.e. February 15, 2019-June 30, 2019 or January 1, 2020-February 29, 2020).⁶

Forgiveness Calculation: Step 3 (Lines 8-10)

The smallest value of Lines 8-10 will determine your max forgiveness:

a) For Line 8 – Multiply Line 6 by Line 7. This calculation incorporates the loan forgiveness reduction required for any full-time equivalency (FTE) employee reductions as described in PPP Schedule A.

b) For Line 9 – Enter the full PPP loan amount.

c) For Line 10 – Divide the total eligible payroll costs (Line 1 in the Forgiveness Application) incurred or paid during the Covered Period or the Alternative Payroll Covered Period, as applicable, by 0.75, and enter the amount. This determines whether at least 75 percent (75%) of the potential forgiveness amount was used for payroll costs.

Forgiveness: Conclusion

Based on Line 11 of the application, enter the smallest of lines 8, 9, or 10 above. The smallest of the three will be the maximum forgiveness allowable under a borrower's PPP. Note: If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender.

To see our prior alerts and other material related to the pandemic, please visit the [Coronavirus/COVID-19: Facts, Insights & Resources](#) page of our website by clicking [here](#).

² 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.

³ For clarity, in the example in footnote 1, Borrowers who elect to use the Alternative Payroll Covered Period must apply the Alternative Payroll Covered Period wherever there is a reference in the application to "the Covered Period or the Alternative Payroll Covered Period."

⁴ This is Line 5 of the Forgiveness Application. A borrower enters the number obtained from PPP Schedule A, line 3. This amount reflects the loan forgiveness reduction required for salary/hourly wage reductions in excess of 25% for certain employees as described in PPP Schedule A.

⁵ This calculation will be used to determine whether the Borrower's loan forgiveness amount must be reduced due to a statutory requirement concerning reductions in full-time equivalent employees.

⁶ The SBA has added some ambiguity in the Forgiveness Application by including a "safe harbor" whereby 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. Perhaps it makes most sense for those applicants who are considering applying for forgiveness before June 30 to wait until June 30 to apply for forgiveness (based on the current language of the Forgiveness Application).

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