SBA releases application and instructions for PPP loan forgiveness

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On May 15, 2020, the U.S. Small Business Administration (SBA) released the application and instructions for loan forgiveness under the Paycheck Protection Program (PPP). The application and instructions provide additional clarity to borrowers regarding the process and calculations applicable to loan forgiveness.

How to apply for loan forgiveness

The application, together with the PPP Loan Forgiveness Calculation Form and PPP Schedule (Schedule A) must be submitted to the lender servicing the loan. A PPP Borrower Demographic Information Form may also be completed at the borrower's option. The application may be submitted to the lender electronically.

The application requires the borrower to provide the following information:

- PPP loan amount
- PPP loan disbursement date
- The total number of employees at the time of the loan application and the number of employees at the time of the loan forgiveness application
- The first date on which the borrower received the PPP loan proceeds
- If the borrower received an Economic Injury Disaster Loan (EIDL), the amount of such loan
- The eight-week (or 56-day) covered period (Covered Period), which is the 8-week (or 56-day) period beginning on the disbursement date of the PPP loan (for example, if the borrower received the PPP loan on April 20, 2020, the first day of the Covered Period is April 20, 2020, and the last day of the Covered Period is June 14, 2020)
- For administrative convenience, the application allows borrowers with a biweekly (or more frequent) payroll schedule to calculate eligible payroll costs using the 8-week (or 56-day) period beginning on the first day of their first pay period following the loan disbursement date (Alternative Payroll Covered Period) (for example, if the borrower received the PPP loan on April 20, 2020, and the first day of its first payroll period following the disbursement date is April 26, 2020, the first day of the Alternative Payroll Covered Period is April 26, 2020 and the last day of the Alternative Payroll Covered Period is June 20, 2020)
- If a borrower elects to use the Alternative Payroll Covered Period, it must apply this period wherever the application references "the Covered Period or the Alternative Payroll Covered Period" (if the application only references Covered Period, the borrower must apply the Covered Period (i.e., the 8-week (or 56-day) period beginning on the disbursement date of the PPP loan))
- Whether the borrower received a PPP loan in excess of $2 million

The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice and does not create an attorney-client relationship. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

Calculation of loan forgiveness amount

The following costs are eligible for loan forgiveness:

- Payroll costs
  - Borrowers are eligible for loan forgiveness for the payroll costs paid and the payroll costs incurred during the Covered Period or the Alternative Payroll Covered Period
  - 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 that are incurred, but not paid, during the borrower's last pay period of the Covered Period or the Alternative Payroll Covered Period are eligible for loan forgiveness if paid on or before the next regular payroll date
  - For each individual employee, the total amount of cash compensation eligible for loan forgiveness may not exceed an annual salary of $100,000, as prorated for the covered period (or $15,385, the 8-week equivalent of $100,000)
- Business mortgage interest payments
  - Payment of interest (but not including any payment or prepayment of principal) on any business mortgage obligation on real or personal property so long as the mortgage was in place on Feb. 15, 2020
- Business rent or lease payments
  - Business rent or lease payments pursuant to lease agreements for real or personal property so long as the lease agreement was in place on Feb. 15, 2020
- Business utility payments
  - Business payments for services for electricity, gas, water, transportation, telephone or internet access so long as the service was in place on Feb. 15, 2020

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 percent of the total loan forgiveness amount.

Reductions to loan forgiveness amount

Schedule A and the Schedule A Worksheet (Worksheet) must be completed to determine whether the loan forgiveness amount will be subject to reduction. The Worksheet includes two tables for completion by the borrower:

- **Table 1:** List all employees who were employed at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence in in the U.S. and who received compensation from the borrower at an annualized rate of less than or equal to $100,000 for all pay periods in 2019 or were not employed at any point in 2019
- **Table 2:** List all employees who were employed at any point during the Covered Period or the Alternative Payroll Covered Period whose principal residence is in the U.S. and who received compensation at an annualized rate of more than $100,000 for any pay period in 2019

The list of employees in Table 1 and Table 2 should not include any independent contractors, owner-employees, self-employed individuals or partners. The amount paid to owner-employees, self-employed individuals or general partners is listed separately on Schedule A. A borrower may not include the compensation paid to an independent contractor in its loan forgiveness application.

Table 1 and Table 2 must also include the cash compensation and the average full-time equivalency (FTE) for each employee during the Covered Period or the Alternative Payroll Covered Period.

- **Cash compensation:** Cash compensation is equal to the sum of gross salary, gross wages, gross tip, gross commissions, paid leave (vacation, family, medical or sick leave, not including leave covered by the Families First Coronavirus Response Act), and allowances for dismissal or separation paid during the Covered Period or the Alternative Payroll Covered Period
- **Average FTE:** To determine the average FTE during the Covered Period or the Alternative Payroll Covered Period for each employee, the borrower should divide the average number of hours per week by 40 (round the total to the nearest tenth); alternatively, the borrower may use a simplified method at its election, which assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work less than 40 hours per week

The loan forgiveness amount may be subject to reduction for any reductions in the borrower's average weekly number of FTE employees or a reduction in the salary or hourly wages of certain employees. The Worksheet and the related instructions contain a step-by-step process for calculating the amount of any reduction to the loan forgiveness amount.

- **Average FTE reduction**
  - The loan forgiveness amount will be reduced if the borrower's average weekly number of FTE employees during the Covered Period or the Alternative Payroll Covered Period was less than the total average weekly number of FTE employees during a reference period (Reference Period) chosen by the borrower
  - The Reference Period is, at the borrower's election, either (1) Feb. 15, 2019, to June 30, 2019, or (2) Jan, 1 2020, to Feb. 29, 2020
  - In the case of seasonal employers, the Reference Period may be, at the borrower's election, either of the two periods described above or any consecutive 12-week period between May 1, 2019, and Sept. 15, 2019
  - The total average weekly number of FTE employees during the Reference Period is calculated using the same method for completing Table 1 and Table 2
  - The number of the borrower's FTE employees during the Covered Period or the Alternative Payroll Covered Period should include:
    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 and the offer was rejected by the employee
    2. Any employees during the Covered Period or the Alternative Covered Period who were fired for cause, voluntarily resigned, or voluntarily requested and received a reduction of their hours; provided, in each case, the position was not filled by a new employee, FTE reductions as a result of any of these circumstances will not reduce the loan forgiveness amount
  - Safe Harbor: The loan forgiveness amount will not be reduced for any reduction in the borrower's FTE employee levels if (1) the borrower reduced its FTE employee levels during the period from Feb. 15, 2020, to April 26, 2020, and (2) the borrower restores its FTE employee levels by not later than June 30, 2020, to the FTE employee levels in the borrower's pay period that included Feb. 15, 2020
- **Salary/hourly wage reduction**
  - Table 1 must also include the amount of any salary or hourly wage reduction for each employee and the loan forgiveness amount will be reduced if there was a decrease in the average annual salary or hourly wage of any employee listed in Table 1 of more than 25 percent as compared to the average annual salary or hourly wage for the period from Jan. 1, 2020, to March 31, 2020

- For each employee that has been subject to a salary or hourly wage reduction of more than 25 percent, the borrower must calculate the amount by which the reduction exceeds 25 percent of the salary or hourly wage of the employee in effect prior to such reduction
- Safe Harbor: The loan forgiveness amount will not be reduced for any salary hourly wage reduction if (1) the borrower reduced the salary or hourly wage during the period from Feb. 15, 2020, to April 26, 2020, and (2) the salary/hourly wage of the employee as of June 30, 2020, is equal to or greater than the salary/hourly wage in effect as of Feb. 15, 2020

Required documentation

In addition to the PPP Loan Forgiveness Calculation Form and Schedule A, the borrower must submit with its application the following documentation:

- **Payroll costs:** Documentation verifying eligible cash compensation and non-cash benefit payments for the Covered Period or the Alternative Payroll Covered Period consisting of the following:
  - Bank account statements or third-party payroll service providers reports documenting the amount of cash compensation
  - Tax forms (or equivalent third-party payroll service provider reports for the periods that include the Covered Period or the Alternative Payroll Covered Period, including payroll tax filings reported (or that will be reported), to the Internal Revenue Service (IRS) and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported (or that will be reported) to the relevant state
  - Payment receipts, cancelled checks or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans
- **FTE:** Documentation, which may include payroll tax filings and state quarterly business and individual employee wage reporting and unemployment insurance filings, showing (based on the Reference Period selected by the borrower as described above):
  - The average number of FTE employees on payroll per month employed by the borrower between Feb. 15, 2019, and June 30, 2019
  - The average number of FTE employees on payroll per month employed by the borrower between Jan. 1, 2020, and Feb. 29, 2020
  - In the case of a seasonal employer, the average number of FTE employees on payroll per month employed by the borrower between Feb. 15, 2019, and June 30, 2019, or between Jan. 1, 2020, and Feb. 29, 2020, or any consecutive 12-week period between May 1, 2019, and Sept. 30, 2019
- **Non-payroll costs:** documentation verifying the existence of obligations/services prior to Feb. 15, 2020, and eligible payments during the covered period for the following:
  - Business mortgage interest payments, including lender amortization schedules and receipts, cancelled checks or account statements, or lender account statements from February 2020 and the months of the Covered Period through one month after the end of the covered period verifying payments
  - Business rent or lease payments, including copies of current lease agreements and receipts, cancelled checks or account statements, or lessor account statements from February 2020 and the months of the Covered Period through one month after the end of the covered period verifying payments
  - Business utility payments, including copies of invoices from February 2020 and those paid during the Covered Period and receipts, cancelled checks or account statements verifying payments

Additionally, the borrower must maintain, but is not required to submit with its application, the PPP Schedule A Worksheet or its equivalent prepared by the borrower and documentation including the following:

- Documentation supporting the listing of all individual employees in Table 1 of the Worksheet, including the calculations of salary or hourly wage reductions
- Documentation supporting the listing of all individual employees in Table 2 of the Worksheet, including that the listed employees received during any single pay period during 2019 compensation at an annualized rate of more than $100,000
- Documentation regarding job offers and refusals, firings for cause, voluntary resignations, and written requests from employees for reductions in work schedule
- Documentation supporting the Average FTE Reduction Safe Harbor
- All records relating to the borrower's PPP loan, including its PPP loan application and all documentation submitted with the loan application, documentation supporting the borrower's certifications as to the necessity of the PPP loan and its eligibility for the PPP loan, documentation necessary to support the loan forgiveness application, and documentation demonstrating the borrower's material compliance the PPP requirements

All documentation must be retained by the borrower for six years after the date the loan is forgiven or repaid in full. The borrower must permit authorized representatives of SBA, including the Office of Inspector General, to access such files upon request.

Application certifications

In connection with the borrower's loan forgiveness application, the borrower is required to certify, among other things, the use of the PPP loan proceeds, the calculations of all applicable reductions to the loan forgiveness amount, and the loan forgiveness amount does not include non-payroll costs in excess of 25 percent of the amount requested. All documentation must be true and correct and, with respect to tax documents, consistent with the documents the borrower has submitted or will submit to the IRS and/or state tax or workforce agencies.