

CLIENT ALERT

SBA Releases Complex PPP Loan Forgiveness Application, Creating Further Need for Guidance

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On May 15, 2020, the Small Business Administration (SBA) released the Paycheck Protection Program Loan Forgiveness Application which is comprised of a PPP Loan Forgiveness Calculation Form ([SBA Form 3508](#)), including related certifications, and worksheets to assist in making the calculations. Although the SBA has yet to release further guidance on PPP Loan forgiveness, the Loan Forgiveness Application does provide some guidance on elements of forgiveness that were not clear from either the text of the Cares Act, or the SBA's Interim Final Rules and FAQs. However, the complexity of the application and the onerous submission requirements present challenges for small businesses and create a further need for guidance and legal/accounting support.

The following are the major takeaways from the Loan Forgiveness Application Form.

Potential Forgiveness Amounts. The PPP Loan Forgiveness Application provides three methods for arriving at the loan forgiveness amount, which ultimately must be the **lowest amount** of the following:

- **100% of the PPP Loan Amount.** This alternative applies if there are no wage reductions in excess of 25%, and at least 75% of the principle was used for payment of payroll costs.
- **Impact on Employers that implemented wage/hour reductions in excess of 25% or had reductions in full time employees during the Covered Period.** If employees employed during the 8 week period after the receipt of PPP Loan proceeds (the "Covered Period") experience a greater than 25% wage/hours reduction when compared to the period between January 1, 2020 and March 30, 2020, then the aggregate amount of the excess reduces, dollar for dollar, the maximum total forgiveness. The amount is then multiplied by a fraction the numerator of which is the average number of full time employees per month employed during the Covered Period and the denominator of which is the average number of full time employees per month during the period (selected by the borrower) of either February 15, 2019 to June 30, 2019 or January 1, 2020 to February 29, 2020¹. By way of example, if forgivable costs for payroll, mortgage interest, rent and utilities total \$1,000,000, and the aggregate wage reductions in excess of 25% are \$100,000, then the maximum forgiveness amount is first reduced to \$900,000. If the average number of employees during the Covered Period was 75 and the average number of employees during the earlier period selected by the borrower was 100, the \$900,000 would be multiplied by .75, and the forgiveness amount would be reduced to \$675,000. Through the application of an FTE reduction safe harbor, this further reduction would not apply if a borrower reduced the number of its full time employees in the period between February 15, 2020 and April 26, 2020 and then restored before June 30, 2020 its payroll level to that in existence on February 15, 2020.²
- **Payroll Costs less than 75% of the Loan amount.** If payroll costs are less than 75% of the loan amount, then the maximum forgiveness is the borrower's payroll costs multiplied by .75.

With regard to this latter alternative, this is the first clarification of the harsh consequences of the SBA's proclamation that at least 75% of the PPP Loan be used for payroll, and is quite penal. It is also unknown whether this will be revisited in light of the questions raised regarding the 75% mandate in the [SBA's OIG report](#), which we discussed in a [previous alert](#).

Covered Period. The Covered Period for loan forgiveness is the 8-week period beginning on the date that the loan proceeds were disbursed, unless proceeds were received in installments, in which case the 8-week period begins on the date of the first disbursement

Eligible Payroll Costs; Alternative Payroll Covered Period. Payroll costs are considered paid on the date that paychecks are distributed or paid via electronic deposit. Payroll costs are considered incurred on the day that the pay is earned. Payroll costs incurred but not paid during the borrower's last pay period of the Covered Period are eligible for forgiveness if paid on or before the next payroll date. The Application Form also gives borrowers an alternative period for calculating payroll during the Covered Period. Borrowers can use the actual 8-week period or they may calculate payroll costs using the 8-week period that begins on the first day of their first pay period following the PPP Loan disbursement date.

Eligible Non-Payroll Costs.

- 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. Consistent with the requirement that at least 75% of the loan must be used for payroll cost, the Loan Forgiveness Application also caps non-payroll costs at 25% of the forgiveness amount.
- Covered Utility payments are defined to consist of electricity, gas, water, transportation, telephone or internet access.
- The form specifically prohibits interest prepayments from being included in forgiveness.

In its release issuing the Loan Forgiveness Application, the SBA stated that it will also soon issue regulations and guidance to further assist borrowers as they complete their applications. Crowell & Moring will continue to monitor and provide updates regarding developments in the PPP.

¹In the case of seasonal employees different comparison periods apply.

² The Loan Forgiveness Application provides a worksheet to determine if this FTE Reduction Safe Harbor applies.

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