

PPP Guidance Update: SBA Releases Loan Forgiveness Application for Borrowers

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On May 15, 2020, the Small Business Administration (SBA) released the Paycheck Protection Program (PPP) Loan Forgiveness Application form (the Application) for borrowers to submit to the lender servicing their PPP loan, along with instructions for the Application. The Application contains four parts: (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; (3) the PPP Schedule A Worksheet; and (4) the (optional) PPP Borrower Demographic Information Form. The SBA noted that all borrowers must submit parts (1) and (2) to their lender.

The Application includes detailed instructions for borrowers on how to calculate their loan forgiveness amounts, as well as a few noteworthy clarifications and changes to the current PPP guidance, as summarized below:

- **Alternative Payroll Covered Period.** In addition to the traditional Covered Period for borrowers that consists of the eight weeks following the first disbursement of the PPP loan, the Application provides that borrowers with a biweekly (or more frequent) payroll schedule may elect to use an Alternative Payroll Covered Period in limited instances (the Alternative Period). This Alternative Period allows borrowers to calculate eligible payroll costs using an eight week period that begins on the first day of their first pay period following their PPP loan disbursement date.
- **Timing of Payroll Costs.** Payroll costs that are eligible for forgiveness are those incurred and paid during the eight week covered period (or Alternative 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 incurred but not paid during the borrower's last pay period of the Covered Period (or Alternative 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 Period).

- **Timing of 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. It does not appear from the Application that the Alternative Period applies to non-payroll costs.
- **FTE Employee Calculations.** For purposes of potential forgiveness reductions, the borrower must calculate the average full-time equivalency (FTE) during the Covered Period (or Alternative Period) for each employee. To calculate, the SBA has provided that borrowers must, for each employee, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth (with the maximum being 1.0), or, alternatively, borrowers may elect to calculate using 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 per week.
- **Employee Reduction Exemption.** The Application includes exemptions to a borrower's loss of forgiveness for reducing its number of employees. Any employee reductions in the following cases will not reduce the borrower's loan forgiveness: (1) any positions for which the borrower made a good-faith, written offer to rehire an employee during the Covered Period (or Alternative Period) which was rejected by the employee; and (2) any employees who during the Covered Period (or Alternative Period) (a) were fired for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours.
- **FTE Reduction Safe Harbor.** The Application specifically notes that a borrower is exempt from the reduction in loan forgiveness based on FTE employee levels 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.

The full Application may be [found here](#). All PPP borrowers should review the Application in detail as soon as possible. If you have any questions about the PPP program or this latest guidance, please call Drew Parobek, Marty Gates, Cauley Simmons, or your Vorys attorney today.

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