



The SBA and Treasury Release a Paycheck Protection Program Loan Forgiveness Application

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On May 15, 2020, the Small Business Administration (SBA), in consultation with the Department of the Treasury, released the Paycheck Protection Program (PPP) Loan Forgiveness Application (“Application”). The PPP was created by the Coronavirus Aid, Relief, and Economic Security Act to provide forgivable loans to eligible small businesses to keep workers on the payroll during the COVID-19 pandemic. The [Application](#) provides clarity on some questions that existed under the PPP.

1. Time Period in Which to Spend Loan Proceeds to Get Forgiveness

Businesses must spend PPP loan proceeds on authorized expenses within eight weeks from the date they receive the loan. However, businesses who do not receive the loan proceeds just before a regularly-scheduled payroll period may have trouble spending the loan proceeds in the eight-week period.

In recognition of this issue, the Application provides for an “alternative payroll covered period.” Businesses with a biweekly, or more frequent, payroll schedule may elect to calculate eligible payroll costs using the eight-week period that begins on the first day of their first pay period following receipt of the PPP loan proceeds.

Furthermore, eligible costs (payroll or otherwise) incurred, but not paid, during the eight-week period are covered if the business pays them before the next regular payroll or billing date.

2. Headcount Reduction Exceptions

Businesses generally are required to maintain headcount or risk having their loan forgiveness amount reduced. The Application makes clear that headcount reductions for the following reasons will not reduce the loan forgiveness amount:

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- Any positions for which the business made a good faith, written offer to rehire an employee, and the employee rejected it;
- Any employee terminated for cause;
- Any employee who voluntarily resigned; and
- Any employee who voluntarily requested and received a reduction in hours.

3. Calculating Payroll If Owner Collects a Draw

Some business owners are not paid through traditional payroll, but rather collect an owner's draw. The Application states that owner-employees or self-employed individuals/general partners may calculate payroll costs as eight weeks of 2019 compensation, capped at \$15,385 per individual.

4. Average FTE Calculation

Businesses that retain or bring back all of their employees during the eight-week coverage period, or by June 30, 2020, will not have their loan forgiveness amount reduced. The SBA has offered two alternative methods for calculating a business's full-time equivalents (FTE) before the pandemic and during the eight-week period.

The first option is to take the average number of hours paid each week for each employee, divide by 40, and round to the nearest tenth. The maximum number of hours per employee is 40 or one FTE.

The second option is to assign 1.0 to employees who work 40 hours or more per week and 0.5 to employees who work fewer than 40 hours.

5. Documenting Payroll Costs

Businesses will have to document their payroll costs in several ways: (a) bank account statements or reports from a third-party payroll service documenting the cash compensation paid to employees; (b) tax forms (usually Form 941 and state quarterly wage and unemployment filings) that reflect the covered period; and (c) payment receipts, cancelled checks, or account statements documenting the amount of employer contributions to employee health insurance and retirement plans.

6. Rent Includes Leases of Personal Property

PPP loan proceeds are to be used for payroll, business mortgage interest, rent, and utilities. Many businesses questioned whether the lease of personal property could be included (and thus forgiven) as "rent." The Application defines rent to include "Business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020."

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Thus, PPP loan proceeds may be used on leases (and interest on those leases) for personal property used for business, like copy machines or automobiles.

To document a business mortgage obligation, businesses must provide a lender amortization schedule and receipts of their payments, as well as statements from February 2020 and during the eight-week covered period. For rent or lease payments, businesses must provide a copy of the lease agreement showing that it was in effect before February 15, 2020, as well as copies of account statements from their landlord/lessor showing the payments, or cancelled checks evidencing the payments, made during the eight-week period.

7. Utilities

The Application defines utility expenses that may be included (and thus forgiven) as “electricity, gas, water, transportation, telephone or internet access, for which service began before February 15, 2020.” The required supporting documentation includes an invoice or statements from February 2020 showing the utility service in place, as well as account statements or cancelled checks showing payments.

8. Loans in Excess of \$2 Million

The Application requires businesses to certify whether the total loan proceeds of the business, including affiliates, totals \$2 million or more. The SBA likely will be auditing those businesses.

Small business owners will submit their Application and their supporting documentation to their bank, and their bank will have 60 days to approve or reject the forgiveness request. Attention to detail on the Application will maximize a business’s chances of full loan forgiveness.

Regulations and additional guidance from the SBA and Treasury are expected to be forthcoming.

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