

SBA ISSUES PPP LOAN FORGIVENESS APPLICATION

The Small Business Administration (“SBA”) issued the Loan Forgiveness Application on May 15, 2020, which may be accessed [here](#). The application addresses a number of questions previously posed by borrowers, and we anticipate additional guidance regarding forgiveness to be forthcoming. In addition to more detailed information provided in our [Cares Act Paycheck Protection Program \(“PPP”\) Use of Funds and Forgiveness FAQ](#), we encourage you to consider the following items as you use PPP funds and when applying for forgiveness (*important updated guidance is noted with the use of italics*).

1. “Covered Period”

The *56-day* period beginning on the PPP Loan Disbursement Date.

2. “Alternative Payroll Covered Period”

Borrowers with a biweekly (or more frequent) payroll schedule may elect to commence the Covered Period on the *first day of their first pay period following their PPP Loan Disbursement Date*.

3. Borrowers must advise if they, together with their affiliates, received PPP funds in excess of \$2 million.

Previously, any borrower receiving less than \$2 million was presumed to not be subject to a review of their application and use of funds. With this requirement, the SBA is subjecting *borrower and all affiliates* collectively receiving in excess of \$2 million of PPP funds to such review. You should prepare and plan accordingly (noting that the safe harbor period to return funds ends on May 18, 2020).

4. Eligible Payroll Costs

Payroll costs *paid* and *incurred* during the Covered Period (or Alternative Payroll Covered Period) are generally eligible for forgiveness. Payroll costs are considered *paid* on the day paychecks are distributed or an ACH credit transaction is initiated. Payroll costs are considered *incurred* on the day 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 Payroll Covered Period) are eligible for forgiveness if paid on or before the next regular payroll date*.

5. Eligible Nonpayroll Costs

- Mortgage interest and rent for obligations incurred before February 15, 2020, include *personal property* in addition to real property.
- Utility payments for electricity, gas, water, *transportation*, telephone or internet access for which service began before February 15, 2020.

- Eligible nonpayroll 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.
- Cannot exceed 25% of the total forgiveness amount.

6. Full Time Equivalents (FTE) defined

FTE's, for purposes of loan forgiveness, are determined by either:

- A. Dividing the average number of hours paid per week for a particular employee by 40 and rounding to the nearest tenth, with the maximum value for each employee equal to 1 (employees working more than 40 hours are still counted as a single FTE); or
- B. A simpler method of assigning a value of 1.0 for each employee working 40 hours or more per week and 0.5 for employees who work fewer hours.

7. Documentation to be submitted

- Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees;
- Tax forms for the periods overlapping the Covered Period or the Alternative Payroll Covered Period (Form 941, state quarterly business and individual wage reporting and unemployment insurance tax filings, etc.);
- Payment receipts, cancelled checks or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the borrower included in the forgiveness amount;
- Documentation showing the average number of FTE employees on payroll per month employed by the borrower during its chosen comparison period (February 15, 2019, through June 30, 2019, or January 1, 2020, through February 29, 2020, or periods permitted for seasonal employers);
- Copies of lender amortization schedule, receipts or cancelled checks and account statements verifying eligible mortgage interest payments;
- Copies of current lease agreement(s), receipts or cancelled checks and account statements verifying eligible rent or lease payments; and
- Copies of invoices from February 2020 and those paid during the Covered Period for eligible utilities and receipts, cancelled checks or account statements verifying those eligible payments.

8. Documentation to be maintained, but not required to be submitted

- Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1 or Table 2;
- Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations and written requests by any employee for reductions in work schedule; and

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- Documentation supporting the PPP Schedule A “FTE Reduction Safe Harbor.”

Please visit the [BME COVID-19 Legal and Legislative Resource page](#) or view our [CARES Act Paycheck Protection Program Use of Funds and Forgiveness FAQ](#) for more information. Please contact [Chad Walker](#) or your [Bose McKinney & Evans](#) attorney with any questions.