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PPP Loan Forgiveness: How to Apply and How it Works

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Just a few weeks before the first Paycheck Protection Program (PPP) borrowers will become eligible to apply for forgiveness of their PPP loans, the US Small Business Administration (SBA) and the Department of the Treasury released the application form and instructions that must be used. The application and instructions can be downloaded [here](#).

Businesses, self-employed persons, independent contractors, sole proprietors, non-profit organizations, veterans organizations, and Tribal business concerns who have received a PPP loan and wish to have all or a portion of it forgiven must complete and submit several components of the application to their lenders: the PPP Loan Forgiveness Calculation Form and the PPP Schedule A. The PPP Borrower Demographic Information Form is optional, and the PPP Schedule A Worksheet is to be retained in the borrower's files.

Applications for loan forgiveness can only be made after the conclusion of the eight-week (56-day) period from the date the loan funds were disbursed (a Covered Period) or, at the election of a borrower with a biweekly or more frequent payroll, the eight-week (56-day) period that begins on the first day of its first pay period following the funding of the loan (an Alternative Payroll Covered Period). Based on existing guidance, lenders are required to review the applications and work with borrowers to correct manifest errors, but lenders are not liable for mistakes or misstatements of borrowers in the applications.

What is Eligible for Loan Forgiveness?

In general, PPP loan proceeds spent on four categories of costs incurred and paid by the borrower during the applicable period are eligible for loan forgiveness:

1. Eligible payroll costs incurred or paid to U.S.-resident employees during the Covered Period or Alternative Payroll Covered Period (Eligible Payroll Costs). Not less than 75% of the amount of the PPP loan to be forgiven must be attributable to Eligible Payroll Costs. Eligible Payroll Costs include:
 - Gross salary, gross wages, gross commission or similar compensation, but not exceeding \$15,385 per employee during the eight-week period.
 - Amounts paid to owners of the borrower who work for the borrower, including owner-employees, self-employed persons and general partners, but not exceeding the lesser of \$15,385 for each such person during the eight-week

period or the eight-week equivalent of the owner's applicable compensation during 2019.

- Gross cash tips or equivalent.
- Payments for vacation, parental, family, medical or sick leave, but not leave covered by the Families First Coronavirus Response Act.
- Allowance for dismissal or separation.
- Employer contributions paid to employee group healthcare benefits, including insurance premiums and employer contributions to a self-insured employer-sponsored group health plan (but not pre-tax or after-tax contributions by employees).
- Employer contributions paid to employee retirement plans (but not pre-tax or after-tax contributions by employees).
- Employer payments of state and local taxes assessed on employee compensation, such as state unemployment insurance tax, but excluding taxes withheld from employee compensation. Not less than 75% of the loan proceeds must be spent in this category.

Based on guidance from the SBA, payroll costs are deemed “incurred” on the day that the employee earned the salary, wage or commission, and they are deemed “paid” on the day when the borrower distributes paychecks to employees or initiates an ACH transaction to credit employees' accounts. Payroll costs the borrower has incurred but not paid during the eight-week period can be included if the borrower pays them on its next normal payroll date.

2. Interest incurred and paid during the Covered Period (not the Alternative Payroll Covered Period) on a business mortgage loan for real or personal property borrowed before February 15, 2020 but excluding any principal payments or prepayments.
3. Business rent or lease payments incurred and paid during the Covered Period (not the Alternative Payroll Covered Period) on a lease agreement for real or personal property entered into before February 15, 2020.
4. Business utility payments incurred and paid during the Covered Period (not the Alternative Payroll Covered Period) for electricity, gas, water, transportation, telephone or internet access where such service began before February 15, 2020.

Interest on non-mortgage debt obligations of the borrower incurred before the Covered Period can be paid using PPP loan proceeds, but it is not eligible for forgiveness.

Forgiveness Reduced if FTE Employee Headcount Reduced

Loan forgiveness is proportionally reduced if the average monthly number of full-time equivalent (FTE) employees employed by the borrower during the Covered Period or Alternative Payroll Covered Period is less than the

average monthly number of FTE employees employed by the borrower during the period (as selected by the borrower) from February 15, 2019 through June 30, 2019, or from January 1, 2020 through February 29, 2020 (or, in the case of a seasonal employer, the average monthly number of FTE employees employed by the borrower during the period from February 15, 2019 through June 30, 2019).

Loan forgiveness will not be reduced, however, to the extent average monthly FTE employees employed by the borrower are lower as a result of one of the following: (a) a position where the borrower made a good faith written offer to rehire a laid off or furloughed employee during the Covered Period or Alternative Payroll Covered Period was rejected by the employee (the borrower must document such offer and its rejection in its files); (b) an employee was terminated for cause during the Covered Period or Alternative Payroll Covered Period; (c) an employee voluntarily resigned during the Covered Period or Alternative Payroll Covered Period; or (d) an employee voluntarily requested and received reduced work hours during the Covered Period or Alternative Payroll Covered Period. In addition, a borrower that reduced its FTE employees in the period between February 15, 2020 and April 26, 2020, but which restored its FTE employees to the level it was at during the pay period which included February 15, 2020, will not be subject to the reduced loan forgiveness.

Forgiveness Reduced if Significant Reduction in Salary or Wages

Loan forgiveness can also be reduced if the total salary or wages paid to employees was more than 25% less during the Covered Period or Alternative Payroll Covered Period than it was during the period from January 1, 2020 through March 31, 2020. This reduction in loan forgiveness does not apply to reductions in salary or wages paid to an employee who received salary or wages during any pay period in 2019 at an annualized rate of more than \$100,000.

Borrowers and Affiliates who Borrowed Over \$2 Million

The PPP Loan Forgiveness Calculation Form requires a borrower to check a box if it, collectively with its “affiliates,” received PPP loans aggregating more than \$2 million. Affiliation is determined under preexisting (and complex) SBA rules and precedent. Generally, affiliation can result from direct or indirect ownership of voting stock or other voting equity interests, overlapping management with another business, identity of interest with another business, or certain rights of a person or entity to prevent a quorum or to prevent certain corporate or company actions of the business.

The affiliation rules do not apply to certain classes of PPP borrowers:

- Businesses which, as of the date of PPP loan disbursement: (a) had 500 or fewer employees (full-time, part-time and other) and (b) was assigned a North American Industry Classification System (NAICS) code beginning with “72”. These businesses include:
 - Hotels, motels, bed-and-breakfast inns, and other traveler

accommodations

- RV parks and campgrounds
 - Recreational and vacation camps (except campgrounds)
 - Rooming and boarding houses, dormitories, and workers' camps
 - Food service contractors
 - Caterers
 - Mobile food services
 - Bars and taverns
 - Restaurants, cafeterias and buffets
 - Snack and beverage bars
- Business concerns which, as of the date of PPP loan disbursement, operated as a franchise that had been assigned a franchise identification number by the SBA (<https://tinyurl.com/y8e9zqe7>).
 - Business concerns which, as of the date of PPP loan disbursement, received financial assistance from a Small Business Investment Company (SBIC) licensed by the SBA (<https://tinyurl.com/yb9rffnb>).
 - Churches, conventions or associations of churches, or other faith-based organizations or entities.

These classes of exempt borrowers should not check the box on the application.

The Treasury Department and SBA have previously stated that any borrower which, with its affiliates, borrowed more than \$2 million in PPP loans will be audited for the accuracy of certifications in the loan application, including the need for the PPP loan and the unavailability of other sources of liquidity. Unless exempted, a checked box will flag the application for a guaranteed audit.

We encourage you to visit Holland & Hart's Coronavirus Resource Site, a consolidated informational resource offering practical guidelines and proactive solutions to help companies protect their business interests and their workforce. The dynamic Resource Site is regularly refreshed with new topics and updates as the COVID-19 outbreak and the legal and regulatory responses continue to evolve. Sign up to receive updates and for upcoming webinars.

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