

Paycheck Protection Program Update: SBA Releases Loan Forgiveness Application

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May 19, 2020

The Small Business Administration (SBA) has released the Loan Forgiveness Application and instructions for the forgiveness of loans under its Paycheck Protection Program (PPP), providing some much-needed clarification on the calculation of the loan forgiveness amount and including guidance on the forgiveness standards if less than all employees are re-hired or retained during the 8-week period after disbursement of the loan.

Full-Time Employees (FTEs). The Loan Forgiveness Application will look to the total number of employees at the time of the PPP loan application and at the time that the borrower is applying for loan forgiveness. Full-time employees are based on a 40-hour workweek. The borrower can calculate part-time employees either on a percentage of hours worked against the 40-hour standard or count part-time employees at 0.5 of an FTE. The borrower has the choice of either method and can use the most advantageous formula.

The SBA also provided guidance in calculating the number of FTEs after the loan was disbursed. In addition to its previous guidance in the FAQs, which state that the borrower can include employees for which the borrower made a bona fide offer to rehire which the employee refused, the borrower can also include employees who were fired for cause, employees who voluntarily resigned, and employees who voluntarily requested and received a reduction in hours.

Election of payroll cost period. The application provides some flexibility in calculating the relevant payroll costs for purposes of loan forgiveness. The application allows borrowers to include payroll costs paid or incurred during the 8-week period following the date of receipt of the loan proceeds. Borrowers can also elect an "alternative payroll covered period" which begins on the first day of the payroll period following the

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receipt of loan proceeds so the borrower can take advantage of all payroll costs during the subsequent 8-week period.

Forgiveness standard. The application provides worksheets to calculate the number of employees retained during the 8-week period. If the average number of FTEs during the 8 weeks is reduced, or the salaries or hourly wages of employees are reduced by more than 25%, the amount of loan forgiveness may be reduced. There are provisions in the application for a proportionate reduction in the loan forgiveness amount for employees who are not re-hired or whose wages are reduced by more than 25%. However, if the employees are restored by June 30, 2020, there is a safe harbor that may apply. **Therefore, June 30 is an important deadline to rehire employees who have been furloughed in order to maximize the amount of loan forgiveness.**

The application will provide loan forgiveness based on the smallest of the following three calculations:

- The amount of the PPP loan,
- A reduced amount accounting for fewer FTEs and reduction in wages greater than 25%, and
- The actual payroll costs during the 8-week period divided by 0.75.

If all employees are retained at the same wages, at least 75% of the loan has been used for payroll costs and the remainder of the loan has been used for payment of interest on mortgage loans, rental payments, or utility payments, the loan should be fully forgiven. Even if 75% of the loan was not used for payroll costs, the loan will be forgiven based on the payroll costs that were in fact paid.

For example if the PPP loan was for \$200,000, and \$100,000 was used for payroll costs during the applicable 8-week period after disbursement, the \$100,000 divided by 0.75 would equal \$133,333 and the \$133,333 could be forgiven if all employees are re-hired by June 30th. If all employees are not re-hired there may be a further reduction in the loan forgiveness amount.

The SBA continues to follow the guideline that there should not be double-dipping, and thus to the extent expenses are forgiven they will not be deductible against income.

Finally, the SBA has confirmed that its scrutiny is focused on loans of over \$2 million by having a separate box to check on the loan forgiveness application.

We will continue to monitor developments related to the PPP loan program and will provide updates accordingly. Please contact the author of this Alert, **Steven Firkser** sfirkser@greenbaumlaw.com | 732.476.2388 with questions. Mr. Firkser is a member of the firm's **Real Estate** and **Redevelopment & Land Use** Departments.