

The SBA Releases Paycheck Protection Program Loan Forgiveness Application (SBA Form 3508)

May 18, 2020

With little to no fanfare, the SBA released the PPP Forgiveness Application late on Friday, May 15, 2020. Known as SBA Form 3508, the Application [can be found here](#)

The Application reads a bit like a simplified tax return and is comprised of the following sections: (i) Application Instructions (pages 1-2); (ii) the PPP Loan Forgiveness Form (pages 3-4); (iii) PPP Schedule A Instructions (page 5); (iv) PPP Schedule A (page 6); (v) PPP Schedule A Worksheet (pages 7-9); (vi) List of Required Documents (page 10); and (vii) PPP Borrower Demographic Information Form (Optional) (page 11).

The Application makes clear that each borrower seeking forgiveness must submit both the PPP Loan Forgiveness Form (the “Forgiveness Form”) and the PPP Schedule A (“Schedule A”), together with all required supporting documentation, to the lender who issued the applicable PPP loan.

Here are some highlights for the (i) Forgiveness Form, (ii) Schedule A and (iii) List of Required Documents:

FORGIVENESS FORM

(1) **Covered Period** – Confirmed to be 8 weeks (56 days). The first day of the Covered Period for a borrower is the date on which the borrower received its loan proceeds.

(2) **Alternative Payroll Covered Period** – Borrowers with a biweekly or more frequent payroll schedule may elect to start their 56 day covered period on the first day of their first pay period following the disbursement of their loan.

(3) **Loans over \$2M** – Borrowers who, in the aggregate with their affiliates (to the extent affiliate aggregation is required under the SBA’s interim final rule on affiliates [found here](#)), have PPP loans in excess of \$2M must check the indicated box. This will clearly signal which Applications need further review by the SBA to confirm appropriateness of the “necessity” certification.

(4) **Eligible Payroll Costs** – The Forgiveness Form clarifies that a borrower must have either “incurred” or “paid” the eligible payroll costs during the applicable of the Covered Period or the Alternative Payroll Covered Period (See the instructions for Line 1 of the Forgiveness Form). So, for example, if your loan was disbursed on April 15 and your first payroll date after loan disbursement was on the same date (for wages owed for the immediately prior period), you can include that payroll in your forgiveness calculations even though that payroll amount was

“incurred” by the borrower (earned by the employees) prior to the loan disbursement date. **This helps to clarify the uncertainty that was created on account of loan disbursements occurring out of cycle with employer payroll periods.** Furthermore, payroll costs “incurred” but not paid towards the end of the Covered Period (or Alternative Payroll Covered Period, as applicable) are eligible for forgiveness if paid on or before the next occurring regular payroll date after the completion of the Covered Period (or Alternative Payroll Covered Period, as applicable). **This provides comfort to employers that they won’t have to run a special payroll to “sneak it in” just before the 8 week period expires.**

(5) 75% Requirement – The SBA is sticking with the requirement that 75% of the amount forgiven must be for payroll costs and that “eligible nonpayroll costs” cannot exceed 25% of the total forgiveness amount.

(6) Additional Certifications – As expected, additional certifications are included in the Forgiveness Form, including certifications on (i) the details on the forgiveness amount requested; (ii) understanding of penalties for knowingly using PPP funds for unauthorized purposes; (iii) verification by the borrower of payments for eligible payroll and non-payroll costs; (iv) submittal of required documentation; (v) submittal being true and correct; (vi) tax documents submitted are consistent with IRS submissions; and (vii) understanding that the SBA may request additional information.

SCHEDULE A

(1) Cash Compensation – The amount of forgiveness requested for each employee may not include cash compensation of more than \$15,385 for the Covered Period (or Alternative Payroll Covered Period, as applicable). This is simply the application of the \$100,000 annualized cap per employee applied to the applicable 8 week (56 day) period. Please note that other non-cash payroll amounts (such as payments for qualifying benefits) are allowed to cause the total forgiveness requested for an individual employee to be over this amount.

(2) Full-Time Equivalent (FTE) Reduction in Forgiveness – The SBA confirmed that – as we suspected in a previous Client Alert – full-time equivalency should be calculated based on the traditional 40-hour workweek (not the 30-hour workweek introduced by the Affordable Care Act (a.k.a. Obamacare)). The comparison of FTE before the PPP loan and during the Covered Period (or Alternative Payroll Covered Period, as applicable) will be used to determine whether a reduction in forgiveness is warranted due to a decline in FTE employees. There is an exception to the FTE reduction standard if an employer offered – in writing – to rehire an employee in good faith and the applicable employee either rejects such offer of re-employment or such employee (i) was fired for cause, (ii) voluntarily resigned, or (iii) voluntarily requested and received a reduction of their hours, in each case during the Covered Period (or Alternative Payroll Covered Period, as applicable).

(3) **FTE Reduction Safe Harbor** – The SBA reiterated the “safe harbor” for borrowers who reduced FTE levels in the period beginning February 15, 2020 and ending April 26, 2020, but who, not later than June 30, 2020, restored their FTE levels to the same level as existed during the pay period that included February 15, 2020.

(4) **Reduction in Forgiveness for Decline in an Employee’s Salary or Hourly Wage** – As the CARES Act and subsequent guidance confirmed, there will be a reduction in allowed forgiveness where an employee’s salary/hourly wage was reduced by more than 25% during the Covered Period (or Alternative Payroll Covered Period, as applicable).

LIST OF REQUIRED DOCUMENTS

(1) **Payroll Records** – Required payroll records include:

- a. Bank account statements or 3rd party payroll service provider reports;
- b. Tax forms (or equivalent 3rd party payroll service provide reports) confirming: (i) payroll tax filings reported (or that will be reported) to the IRS, and (ii) State quarterly business and individual employee wage reporting and unemployment insurance tax filings;
- c. Payment receipts, cancelled checks, or account statements documenting employer contributions to employee health insurance and retirement plans included in the forgiveness amount.

(2) **FTE** – Required FTE records include documentation showing, as applicable:

- a. Average FTE employees on payroll per month between February 15, 2019 and June 30, 2019; or
- b. Average FTE employees on payroll per month between January 1, 2020 and February 29, 2020; or
- c. If elected by seasonal employers, the average FTE on payroll per month for any consecutive 12-week period between May 1, 2019 and September 15, 2019.

(3) **Non-payroll Records** – To the extent that forgiveness is requested for eligible non-payroll amounts, required non-payroll records include documentation verifying the existence (prior to February 15, 2020) of: (i) business mortgage interest payments; (ii) business rent or lease payments; and (iii) business utility payments.

(4) **Documents Required to be Maintained, but not Submitted with the Application** –

a. PPP Schedule A Worksheet (or its equivalent) and supporting documentation including: (i) listing of each individual employee, including the salary/hourly wage reduction calculations if applicable; (ii) listing of each individual employee that received annualized compensation of more than \$100K; (iii) documentation identifying any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by employees for a reduction in work schedule; and (iv) documentation supporting the details of the FTE Reduction Safe Harbor claim by the borrower.

b. All records relating to the borrower's PPP loan, including documentation submitted with the loan application, documentation supporting certifications as to the necessity of the loan request and eligibility for a PPP loan, documentation supporting the forgiveness application, and documentation supporting the borrower's material compliance with PPP requirements.

The documentation listed under this item (4) must be retained by the borrower for 6 years after the date the loan is forgiven or repaid in full, and the borrower must permit authorized representatives of the SBA to access such files upon request.

Final Recommendation: As recommended in previous Client Alerts, as we expect that lenders will quickly be overwhelmed with forgiveness applications, we strongly recommend that each borrower commence now to prepare the information necessary to submit its application for forgiveness and that such application be filed with the applicable lender promptly following completion of the applicable 8 week "Covered Period."

