

Small Business Administration Releases PPP Loan Forgiveness Applications

By Donna F. Hartl

On Friday, May 15, the Small Business Administration (SBA) released [Form 3508, Loan Forgiveness Application](#), with no additional guidance issued by the Treasury Department. Most were encouraged to see the forgiveness application. However, while the application itself answers some questions, it creates other, unanswered questions. We will continue to update our information as clarification becomes available.

The Application (Form 3508)

The Application itself, which contains 11 pages of form and instructions, contains four parts:

1. Paycheck Protection Program (PPP) Loan Forgiveness Application
2. Schedule A
3. Schedule A Worksheet; and
4. Borrower Demographic Information Form, which is optional.

Ignoring the demographic information, you need to work backwards, i.e., first the Schedule A Worksheet, then Schedule A then the form itself. The application reflects an expiration date of Oct. 31, 2020, without explanation as to its significance.

New Information Based on the Form

1. Addition of “Alternative Payroll Covered Period.” Page 1 defines “Covered Period” and “Alternative Payroll Covered Period”. While the covered period is defined as the eight-week period starting with the date PPP funds were first received, **a concept of Alternative Payroll Covered Period is introduced for those employers with biweekly or more frequent payrolls.** For purposes of determining Payroll Cost, an employer can now begin its eight-week period for that purpose to start on the first payroll date following receipt of the funds, eliminating the need to prorate payrolls for the calculation. Note, you can only use Alternative Payroll Covered Period on the form when allowed. If the form asks for Covered Period, only that original time frame can be used.
2. Payroll costs paid **and** payroll costs incurred will be eligible for forgiveness. Payroll costs that have been incurred but not paid during the eight-week period as defined, or alternately defined, only **need to be paid by the next regular payroll, even if outside the eight-week period.** Therefore, there is no need to issue additional payroll payments or accelerate payments, so long as they are paid by the next regularly scheduled payroll.
3. Owner’s cash compensation for those owners with compensation in excess of \$100,000 **is limited to the lesser of \$15,385 or an eight-week equivalent** of the owner’s 2019 compensation.

4. Nonpayroll costs need only be **incurred** during the covered period, and thus can be paid on or before the next normal billing date, even if it exceeds the eight-week period.

Things We Learned About How to Calculate the Forgiveness Amount

1. As suspected, the requirement that 75% of the PPP proceeds be used for payroll costs is **not an all or nothing proposition**, but a reduction. The forgiveness amount calculation is based on the lesser of:
 - a. Total payroll and nonpayroll costs (after reduction for adjustments for reduced FTEs and/or reduced salaries and wages);
 - b. Loan amount
 - c. Total payroll costs divided by 75%
2. FTE calculation is based on a 40-hour week (not 30), with adjustments for those that work more than 40 hours and those that work less. A simplified election can be made to use 1.0 FTE for those working 40 hours or more and .50 FTE for those working less than 40 hours per week. It is critical to note that FTE reduction exceptions for those employees not replaced now include (i) certain employees offered a job to return to work who declined, (ii) employees fired for cause, (iii) employees who voluntarily resigned, and (iv) employees who voluntarily requested and received a reduction of their hours.
3. An FTE reduction safe harbor exempts the employer from the reduction to the forgiveness amount due to a reduction in FTE if the borrower:
 - Had a reduction in FTEs during Feb. 15, 2020 through April 26, 2020; and
 - Restored those FTE levels by June 30, 2020 to the levels in the pay period that includes February 15, 2020.
4. A safe harbor exempts certain borrowers from the loan forgiveness reduction based on salary/hourly wage reductions. First, determine if pay was reduced by more than 25% during the Covered Period or Alternative Payroll Covered Period as compared to the period January 1, 2020 through March 31, 2020. If there was a reduction, determine if the salary/hourly wage reduction safe harbor is met. If (a) the average annual salary or wage between February 15, 2020 and April 26, 2020 was less than the annual salary or wage as of February 15, 2020, and (b) the average annual salary or wage as of June 30, 2020 is equal to or greater than the average salary or wage as of February 15, 2020, there will be no reduction in the forgiveness amount based on salary/wage reductions.

There is no clarification as to how long those June 30, 2020 restored employees have to stay to qualify.

5. The schedule requires disclosure of employee names, the last four digits of employee's social security number, the sum of cash compensation paid to those employees (with capped amounts), each employee's full-time equivalency and any salary or hourly wage reduction greater than 25% for such employees.

Documents, Documents, Documents

On page 10, there is a list of the documentation that must be included with the application, as well as documentation that the borrower must maintain for at least six years. The volume of data and calculations to be made are significant, and sometimes onerous; thus, obtaining advice early and working with your internal bookkeepers or payroll services now will stave off complications later. Many borrowers are already mid-way through their covered period.

If you have any questions or concerns, please contact any of the listed Roetzel attorneys.

Christopher Reuscher

Practice Group Manager, Corporate,
Tax and Transactional

330.762.7994 | creuscher@ralaw.com

Jason Dodson

330.849.6631 | jdodson@ralaw.com

Sarah Grieb

239.649.2727 | sgrieb@ralaw.com

Donna F. Hartl

312.580.1250 | dhartl@ralaw.com

Robert Humphrey

216.615.4830 | rhumphrey@ralaw.com

Terrence H. Link II

330.849.6755 | tlink@ralaw.com

Steven Howard Roth

216.615.4849 | sroth@ralaw.com

John D. Rybarczyk

216.696.7794 | jrybarczyk@ralaw.com

James V. Inendino

312.582.1689 | jinendino@ralaw.com

Lori L. Moore

239.338.4248 | lmoore@ralaw.com

Nathan Pangrace

216.615.4825 | npangrace@ralaw.com

Mark Peasley

330.849.6679 | mpeasley@ralaw.com

Daniel Rosenbaum

312.582.1672 | drosenbaum@ralaw.com

Albert N. Salvatore

216.615.4845 | asalvatore@ralaw.com

Mark L. Sarlson

216.615.4855 | msarlson@ralaw.com

Michael Yashko

239.338.4249 | myashko@ralaw.com