

## **SEO DETAILS:**

Page Title: Paycheck Protection Loan Forgiveness | [INSERT RELATED SERVICE] | [INSERT FIRM NAME]

Meta Description: [NAME OF FIRM] shares insights on the Small Business Administration's Paycheck Protection Program Loan Forgiveness Application, including eligible payroll costs, non-payroll costs, loan forgiveness reductions and required consistency with your tax documents.

Headline: Important Details Regarding the Paycheck Protection Program Loan Forgiveness Application

## **BODY COPY:**

On May 15, 2020, the Small Business Administration (SBA) announced its long-anticipated forgiveness rules via release of the Paycheck Protection Program (PPP) Loan Forgiveness Application.

Through a series of instructions and worksheets, employers now can gain a clearer understanding of how forgiveness will work. The Application answers numerous questions to help borrowers plan when spending their loan proceeds during their 56-day (eight-week) covered period. Several nuanced questions remain unanswered, but it is expected that these may be addressed in future SBA releases.

The following summarizes factors outlined in the PPP Loan Forgiveness Application regarding eligible payroll costs, non-payroll costs, loan forgiveness reductions and required consistency with tax documents.

## **WAGES**

Under the program, eligible payroll costs include payroll costs paid and incurred during the 56-day (eight-week) period. Payroll costs are considered incurred on the day the employee's pay is earned. Additionally, payroll costs incurred during this time period, and paid on or before the next regular payroll date, are eligible for forgiveness. Essentially, each payroll paid during your eight-week period counts toward forgiveness, as do the payroll costs incurred during the last pay period of your eight-week period that are paid in the first regular payroll period after your eight-week period. In a sense, this is cash basis for the first week and accrual basis for the last week.

Borrowers on a biweekly or more frequent payroll schedule are permitted to elect an alternate eight-week period that starts with the first day of the first pay period following the loan disbursement date. Apparently, borrowers on a payroll schedule that is less frequent than biweekly cannot make this election.

Wages are considered paid on the day paychecks are distributed—or the day the borrower originates an ACH transaction. The maximum payroll for any one individual during the eight-week period is \$15,385.

Owner-employees, self-employed individuals and self-employed partners' maximum compensation is 8/52 of 2019 compensation, capped at \$15,385 per individual. This means that

owners cannot increase their pay during the eight-week period above their eight-week average pay for 2019 and have that increase count toward forgiveness.

There is no guidance related to wages for relatives, spouses or children of owners. It appears that these wage costs will count toward forgiveness. Further guidance could clarify this issue.

Note: The Application and guidance do not include any limit on increasing employees' wages; therefore, it appears that employee wage increases are allowed. Additional guidance on this could also be forthcoming.

## **HEALTH INSURANCE**

Eligible costs include costs that are paid or incurred during the eight-week period. These include self-insurance programs and employer-sponsored group health plans, reduced by employee contributions. It appears accrued costs paid during the eight-week period will count toward forgiveness. Additional guidance on this could be forthcoming.

## **RETIREMENT**

Eligible costs include costs paid or incurred during the eight-week period. There do not appear to be any limitations on retirement contributions, including accrued costs paid during the eight-week period. This may be an opportunity for companies to pay 2019 accrued retirement during the eight-week period. And those retirement costs count toward the 75% payroll cost threshold. Additional guidance on this could be forthcoming.

## **EMPLOYER-LEVEL STATE TAXES**

Eligible costs include amounts paid by the borrower assessed on employee compensation. This appears to include taxes paid by the borrower through a payroll company, rather than only taxes paid to the state agency. State withholding taxes are not included. Additional guidance could clarify this.

## **NON-PAYROLL COSTS – RENT, MORTGAGE INTEREST AND UTILITIES**

Non-payroll costs must be paid or incurred during the eight-week period on or before the next regular billing date, even if that falls outside of the eight-week period. Non-payroll costs may not be prepaid, but it appears that accrued costs could be allowed. There may be additional guidance forthcoming that could clarify this.

On a practical level, it seems that non-payroll costs paid during your eight-week period may be included, as well as the portion incurred during your eight-week period that is paid on the first bill following the eight-week period. Similar to payroll costs, this is cash basis for the first bill and accrual basis for the last one.

Borrowers can elect to exclude any amount of non-payroll costs as part of their loan forgiveness application.

## **RENT**

Eligible costs include rent or lease payments pursuant to an obligation in force before February 15, 2020, for real or personal property. It appears that vehicle and equipment leases will count.

## **MORTGAGE INTEREST**

Eligible costs include interest on any business mortgage obligation in place before February 15, 2020, for real or personal property. It appears that interest on loans for vehicles and equipment will count.

## **UTILITIES**

Eligible costs include electricity, gas, water, telephone, internet and transportation costs where service began before February 15, 2020. There is still no guidance regarding what costs are included in "transportation," other than gas for business vehicles, which was indicated in previous guidance.

## **FULL-TIME EQUIVALENTS (FTE)**

The FTE calculation uses a 40-hour workweek as a base. Any employee working more than 40 hours counts as one employee. Any employee who works less is a fractional employee calculated using a 40-hour denominator, rounded to the nearest tenth. Borrowers can also elect to count all part-time employees as 1/2-FTE.

If you have not reduced the number of employees or average paid hours of employees between January 1, 2020, and the end of the covered period, there is no FTE reduction, and the look-back period does not apply.

Calculate FTE during your eight-week period and compare to the look-back period you chose (January 1 – February 29, 2020, or February 15 – June 30, 2019). Any reduction in FTE during your eight-week period will decrease your loan forgiveness proportionately, with a few exceptions.

FTE is not reduced for anyone who:

1. Receives a good-faith written offer of employment that is rejected.
2. Was terminated for cause.
3. Voluntarily resigned.
4. Voluntarily requested a reduction of hours.

**FTE Safe Harbor** – If your average FTE from February 15 – April 26, 2020 is less than your FTE on February 15, 2020 (because you reduced your FTE during this period), and your June 30, 2020 FTE is greater than or equal to your February 15, 2020 FTE, loan forgiveness does not need to be reduced for this calculation. If your average FTE from February 15 – April 26, 2020 is more than your FTE on February 15, 2020, this safe harbor cannot be used.

## **WAGE REDUCTION**

The wage reduction calculation is done on an employee-by-employee basis.

Employees who earned more than \$100,000 annualized during any pay period in 2019 are excluded from this calculation. This means that if a weekly employee earned more than \$1,923.08 in any 2019 pay period, he/she is excluded from the wage reduction calculation.

For all other employees, individual wages earned from January 1 – March 31, 2020 should be annualized. Multiply this number by 75% for each employee. Next, annualize the individual employee's wages for the eight-week period. If the eight-week annualization is more than 75% of the first calculation, there is no wage reduction. If the eight-week annualization is less, use 8/52 of the annualized dollars that are below 75% of the first calculation to reduce your loan forgiveness.

**Wage Reduction Safe Harbor** – If the employee's annualized wages from February 15 – April 26, 2020 are less than the annualized wages on February 15, 2020 (because you reduced wages during this period), and your employee's June 30, 2020 annualized wages are greater than or equal to the employee's February 15, 2020 annualized wages, loan forgiveness does not need to be reduced for this calculation. If the employee's annualized wages from February 15 – April 26, 2020 are more than the employee's annualized wages on February 15, 2020, this safe harbor cannot be used.

## CONSISTENCY WITH TAX DOCUMENTS

Borrowers certify on the loan application that their tax documents are consistent with their tax filings with the IRS and state agencies. For example, a Schedule C that excludes bonus/Section 179 depreciation for loan forgiveness purposes but includes bonus/Section 179 depreciation for tax filing purposes cannot be submitted.

## CONCLUSION

The PPP Loan Forgiveness Application provides borrowers with a foundation for planning and compliance in the use of their loan proceeds. Borrowers will undeniably have specific situations that should be addressed with their banks and advisors. Applying the above interpretation of the PPP Loan Forgiveness Application will be the best path forward as we wait for any additional SBA guidance.

## CLOSE:

Do you have questions about the Paycheck Protection Program Loan Forgiveness Application, or other tax matters? Please contact [NAME] in our [DEPARTMENT] at [NUMBER/EMAIL].

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