

COVID-19

10 Things We Learned From Reading the SBA's PPP Forgiveness Application

The SBA originally promised guidance on PPP loan forgiveness by April 26, 2020. That deadline came and went without a word from the SBA or Department of Treasury. Meanwhile, Borrowers and practitioners were left to their best interpretation of the CARES Act, the various Interim Final Rules and the SBA's frequently updated frequently asked questions documents. Many holes remained, though, and we were left to make our best guess at the right result, often invoking the original intent of the Payroll Protection Program to preserve jobs and funnel money to small business employers in an expedited matter.

But, on May 15, 2020, the SBA finally provided extensive guidance on PPP loan forgiveness in its [Payroll Protection Program Loan Forgiveness Application](#). Here are 10 important things we learned, or had confirmed for the first time, as a result of the publication of the application.

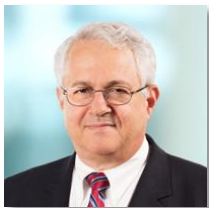
1. "Covered Period." The eight-week period for calculating loan forgiveness is now called the "Covered Period." This is not to be confused with the defined term "covered period" (lowercase) in the CARES Act, which is the period from February 15 – June 30, 2020. Confused? The Covered Period, as expected, begins on the loan disbursement date. The big news, though, is there is now an "Alternative Payroll Covered Period" which employers may elect if they have a biweekly (or more frequent) payroll schedule to calculate eligible payroll costs using the eight-week (56-day period) that begins on the first day of their first pay period following the Loan Disbursement Date. Many employers had expressed concern that if their loan disbursement date came shortly after a payroll had been paid, they may not get four full payroll periods in the eight-week Covered Period. This should solve that problem. The Alternative Payroll Covered Period applies only with respect to payroll costs.
2. In calculating FTEs to determine whether a reduction in your forgiveness amount is required, the SBA had already indicated that employees who refuse a bona fide written order to return need not be counted in your base number. Now, the SBA has added three additional categories of employees that need not be counted in the base number: employees who were fired for cause; voluntarily resigned, or who voluntarily requested and received a reduction in their hours, but in each case only if they were not replaced by a new employee.
3. There is a checkbox on the application to indicate if the Borrower received PPP Loans in Excess of \$2 Million, including its required affiliates. In light of prior guidance indicating that Borrowers whose loans totaled more than \$2 million will be audited, particularly in connection with its certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant," checking this box almost certainly means that the Borrower's loan application will be audited by the SBA.
4. Eligible mortgage interest, rent and utilities can only be forgiven if they are incurred in the Covered Period (the Alternative Payroll Covered Period does not apply to these expenses). But these expenses need not be paid during the Covered Period if they are incurred during the Covered Period and paid by the next regular billing date.
5. In calculating the number of FTEs, for each employee, use the average hours worked by week, divide by 40 and round to the nearest tenth. The maximum for each employee is capped at 1.0.
6. At the election of the Employer, an Employer may use a simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours.

7. To calculate the actual forgiveness amount, the form guides you through three calculations:
 - a. The Base Forgiveness Amount, reduced by adjustments for the FTE Reduction and/or the Salary/Hourly Wage Reduction
 - b. The PPP Loan Amount
 - c. The total eligible Payroll Costs divided by .75

The amount forgiven is the smallest of these three amounts. The practical effect of the last calculation is to set a maximum recovery of 1 1/3 qualifying payroll costs, representing the limitation that payroll costs must account for at least 75% of the amount forgiven.

8. Borrowers will have to certify “I understand that if the funds were knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges.”
9. Borrowers will also be required to certify: “I understand, acknowledge, and agree that SBA may request additional information for the purposes of evaluating the Borrower’s eligibility for the PPP loan and for loan forgiveness, and that the Borrower’s failure to provide information requested by SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower’s loan forgiveness application.”
10. The SBA may direct a lender to disapprove the Borrower’s loan forgiveness application if the SBA determines that the Borrower was ineligible for the PPP loan. While the Forgiveness Application is to be submitted to the lender, this indicates that the SBA will have a hand in at least some forgiveness determinations.

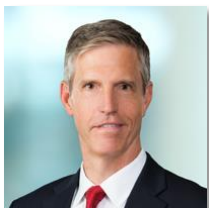
This list is, of course, a summary of some of the most notable contents of the Payroll Protection Program Forgiveness Application. Munsch Hardt has studied the application in depth and is ready to assist you in navigating the forgiveness process. For more help, please contact any of the authors below.



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