



Paycheck Protection Program Loan Forgiveness Application Released

Syracuse ♦ Ithaca ♦ New York City

May 2020

The SBA released the much-anticipated SBA Form 3508, the application required for forgiveness of the Paycheck Protection Program ("PPP") loan. A borrower must submit a loan forgiveness application to its lender, not the SBA.

The application includes very detailed instructions for determining the amount of the PPP loan that may be forgiven. There are four components of the application, which include: (1) the PPP Loan Forgiveness Calculation Form; (2) the PPP Schedule A; (3) the PPP Schedule A Worksheet; and (4) the (optional) PPP Borrower Demographic Information Form. Here is a link to the application form: <https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf>

The application requests calculation and supporting documents for each of the four categories of costs that may be forgiven under the CARES Act, including payroll costs, business mortgage interest payments, business rent or lease payments, and business utility payments. To receive the maximum forgiveness, a borrower must demonstrate that it used at least 75% of the loan proceeds for payroll costs during an 8 week (56 day) period as required by the SBA's interim guidance.

The instructions give two options for the reference period used to calculate the 56 day period for forgivable payroll costs. A borrower may elect an option, called the "Covered Period," which begins on the first date that the borrower received loan funds from the lender. The second option a borrower with bi-weekly or more frequent payroll schedules may elect, called the "Alternative Payroll Covered Period," begins on the first day of the borrower's first pay period following the first date that the borrower received loan funds from the lender.

The CARES Act requires reduction in the amount of loan forgiveness if the average weekly number of full-time equivalent employees was reduced during the reference period. The instructions provide detailed guidance on determining full-time equivalency and set forth an exception to this reduction for good faith offers to re-hire laid off or furloughed employees and a safe harbor for a borrower who restored FTE employee levels prior to June 30, 2020.

Payroll costs are considered paid on the day that paychecks are distributed or that the borrower originates an ACH credit transaction. Payroll costs are considered incurred on the date that the employee's pay is earned. Payroll costs that are incurred but not paid during the last payroll period of the Covered (or Alternative Payroll Covered) Period are eligible for forgiveness if paid on or before the next regular payroll date.

The other types of non-payroll costs eligible for forgiveness must all have been either (1) paid during the Covered Period, or (2) incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period.

A borrower must make several certifications in the application including that the costs included on the form meet the requirements for forgiveness of a PPP loan and lenders can share the information and tax records with the SBA and its Inspector General. A borrower must acknowledge that false statements may result in a fine or imprisonment. The application states that the borrower's failure to provide additional 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. SBA may direct a lender to disapprove a loan forgiveness application if SBA determines that the borrower was ineligible for the PPP loan.

Finally, the instructions include a list of the specific documentation required to be included with the application. If you have received a PPP loan, it is a good time to determine that you have all of the following documents ready to include with your loan forgiveness application.

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Payroll Costs Documentation:

- a. Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees.
- b. Tax forms (or equivalent third-party payroll service provider reports) for the periods:
 - i. Payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941); and
 - ii. State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state.
- c. Payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the borrower included in the forgiveness amount.

Full-Time Employee Documentation: Documents may include payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941) and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state.

Nonpayroll Costs Documentation:

- a. Business mortgage interest payments: Copy of lender amortization schedule and receipts or cancelled checks verifying eligible payments from the Covered Period; or lender account statements from February 2020 and the months of the Covered Period through one month after the end of the Covered Period verifying interest amounts and eligible payments.
- b. Business rent or lease payments: Copy of current lease agreement and receipts or cancelled checks verifying eligible payments from the Covered Period; or landlord account statements from February 2020 and from the Covered Period through one month after the end of the Covered Period verifying eligible payments.
- c. Business utility payments: Copy of invoices from February 2020 and those paid during the Covered Period and receipts, cancelled checks, or account statements verifying those eligible payments.

Our team from the Tax Controversy, Business Transactions, Brownfield Tax Credit, Employment Law and Tax practice areas has experience with loan programs, federal audits, employment law and accounting and finance. We are standing by to answer your questions about completing the application and worksheets, maximizing your forgiveness amount and managing PPP requirements while running your business during these times.

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