

PPP LOAN FORGIVENESS APPLICATION IS NOW AVAILABLE

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On Friday, May 15, the U.S. Small Business Administration (SBA) released the [Loan Forgiveness Application](#) (the “*Application*”) in connection with the Paycheck Protection Program (PPP). The PPP was established under the CARES Act[1] to provide eligible small businesses with cash — in the form of forgivable loans (“*PPP Loans*”) — to help keep employees on payroll during the pandemic and to assist with other specified expenses, including interest on mortgage loans, rent and utilities. The Application provides much-needed clarification, guidance and flexibility for borrowers on a number of issues of concern. Some of the key provisions and/or changes are described below.

- **Electing an Alternative Payroll Covered Period.** The CARES Act provides that a borrower’s eligible payroll costs are calculated using the eight-week (56-day) period (the “*Covered Period*”) commencing on the date that such borrower received its PPP Loan proceeds from its lender (the “*PPP Loan Disbursement Date*”). The Application permits a borrower with a biweekly (or more frequent) payroll schedule to calculate its eligible payroll costs using an “*Alternative Payroll Covered Period*,” which begins on the first day of the first pay period following such borrower’s PPP Loan Disbursement Date. Notably, however, this change is for administrative convenience only and will not impact the amount of loan forgiveness, as further described below in the subsection for “Payroll Costs.”
- **Payroll Costs: Incurred vs. Paid.** Section 1106(b) of the CARES Act indicates that eligible “costs incurred *and* payments made” (emphasis added) during the Covered Period will qualify for

forgiveness. Such language made it unclear whether such costs had to be “incurred,” “paid” or both during the Covered Period. The Application clarifies that payroll costs incurred **or** payments made will qualify for forgiveness. Put another way, (i) payments made during the Covered Period; and (ii) payroll costs incurred during, but not paid until after, the Covered Period (provided that such costs are paid on or before the next regular payroll date) will qualify for forgiveness.

- **Forgiveness Limited to Principal Only (Maybe).** The language of the CARES Act provides that only the principal amount of a PPP loan is forgivable, but the U.S. Treasury Department sowed confusion when it subsequently issued interim final rules providing that both principal and accrued interest were forgivable. The Application provides that forgiveness is limited to principal only. Although it's unclear based on the totality of the guidance to date, it appears from the Application that forgiveness will be limited to principal.
- **Priority of Forgiveness Limitations.** The potential amount of a PPP loan which may be forgiven is calculated as the sum of a business's payroll costs, mortgage interest payments, rent or lease payments and utility payments (the “**Forgivable Amount**”). However, the Forgivable Amount is subject to four potential limitations/reductions: (a) limitation to the principal amount of the loan; (b) at least 75% of the requested forgiveness amount must consist of payroll costs; (c) potential reduction due to decrease in full-time equivalent employees (the “**FTE Reduction**”); and (d) potential reduction due to decrease in employee salaries or hourly wages by more than 25% (the “**Salary Reduction**”). Previously, the order in which such limitations/reductions would be applied to the Forgivable Amount was unknown. The Application clarifies that the Salary Reduction is applied first, followed by the FTE Reduction (the resulting amount, the “**Modified Forgivable Amount**”). Forgiveness is then determined to be the lesser of: (i) the Modified Forgivable Amount; (ii) the original principal amount of the PPP Loan; and (iii) the quotient obtained by dividing payroll costs by 75%.
- **Exceptions to the FTE Reduction.** The Application provides several exceptions to the application of the FTE Reduction where (a)(i) the borrower made a good-faith, written offer to rehire an employee which was rejected by such employee; (ii) an employee was fired for cause; (iii) an employee voluntarily resigned; or (iv) voluntarily requested and received a reduction in hours; and (b) the vacated position was not filled by a new employee.
- **Eligible Mortgage Interest Payments.** The amount of business mortgage interest payments made during the Covered Period includes payments of interest on any business mortgage obligation on real or personal property incurred prior to February 15.
- **Additional Scrutiny for PPP Loans in Excess of \$2 Million.** If the borrower, together with its affiliates (if and to the extent required)[2], received PPP loans with an original principal amount in excess of \$2 million, the borrower must check a box indicating as such — reinforcing the notion that PPP loans in excess of \$2 million will be subject to additional scrutiny.[3]

The above is intended to provide a brief overview of the recently released PPP Loan Forgiveness Application and to highlight some of the changes contained therein with respect to previously issued

guidance from the SBA and the Treasury. We expect the SBA and the Treasury to issue further PPP Loan guidance for borrowers *and* lenders in the near future.

If you have questions or would like to discuss further, please contact [Trey DeLoach](#), [Nikki Gibson](#), [Ed McQueen](#) or Ira Perez.

[1] The Coronavirus Aid, Relief, and Economic Security Act (the "**CARES Act**") was enacted March 27, 2020, to "provide emergency assistance and health care response for individuals families, and businesses affected by the 2020 coronavirus pandemic." We've previously discussed PPP loans and the other relief measures under the CARES Act in a series of in-depth articles available [here](#) (under Commercial Finance) in Bell Nunnally's COVID-19 Legal Resources Directory.

[2] Please click [here](#) for our prior discussion of the affiliate rules and business size requirements applicable to PPP loans.

[3] The SBA recently announced that, with respect to the SBA's review of any PPP loan and the borrower's good faith certification regarding the necessity of such loan, a new safe harbor will apply to borrowers with PPP loans having an original principal amount of *less than* \$2 million. Click [here](#) for more information.

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