SMALL BUSINESS BASICS

A FCDL Basics Guide

Paycheck Protection Program Loan Forgiveness

Disclaimer: This guide is intended to convey general information only and does not provide legal advice or opinions. Please consult with a qualified attorney on all matters contained in this guide.

Introduction

The Paycheck Protection Program ("PPP") is a U.S. Small Business Administration ("SBA") loan established by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") designed to help businesses keep their workforce employed during the Coronavirus (COVID-19) crisis. SBA will forgive loans if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.

This guide is intended for small business and nonprofit borrowers who intend to maximize their loan forgiveness amounts. The information in this guide is based on the interim final rule issued by the Treasury Department and the SBA on May 22.

Loan Forgiveness Application

To apply for PPP loan forgiveness, borrowers will need to complete this application and submit items (1) and (2) to their lender:

https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf

To be eligible for forgiveness, PPP loan proceeds must have been spent on costs incurred during the 56-day period of the loan beginning on the day the proceeds were disbursed, the "Covered Period," or on the first day of the borrower's first payroll cycle, the "Alternative Payroll Covered Period," and must have been spent on costs eligible for forgiveness, which include (1) payroll costs, (2) business mortgage interest payments, (3) business rent or lease payments, and (4) business utility payments.

Payroll costs:

- Include cash compensation (gross salary, wages, tips, commissions, paid leave, and allowances for dismissal or separation) and non-cash compensation (employee benefits including group health care coverage, insurance premiums, retirement, state and local taxes).
- Paid or incurred during the Covered Period are eligible for forgiveness.

- Incurred during the last pay period of the Covered Period are eligible for forgiveness if paid on or before the next regular payroll date.
- Are incurred on the day the employee's pay is earned.
- Are incurred based on the schedule established by the borrower for employees who are not working but are still on the borrower's payroll
- Must make up 75% of the amount for which a borrower seeks loan forgiveness.
- Include employee bonuses and hazard pay, so long as the employee's total compensation does not exceed $100,000 annualized.
- Cannot exceed $15,385, a salary of $100,000 prorated for the 56-day Covered Period, per employee; and
- Are capped for owner-employees by the amount of their 2019 employee cash compensations, retirement, and health care contributions made on their behalf.

Nonpayroll costs:
- Include qualified business mortgage interest payments, business rent or lease payments, and business utility payments.
- Cannot exceed 25% of the loan forgiveness amount.
- Must be paid or incurred during the covered period and paid on or before the next regular billing date.

Reductions in Loan Forgiveness Amount

Section 1106 of the CARES Act specifically requires certain reductions in a borrower's loan forgiveness amount based on reductions in full-time equivalent employees or in employee salary and wages during the covered period.

a. *Full-time Equivalency Employees*

A reduction in FTE employees during the covered period reduces the loan forgiveness amount by the same percentage as the percentage reduction in FTE employees. For example, if a borrower had 10.0 FTE employees during the reference period and only 8.0 FTE employees during the covered period, only 80% of eligible expenses are available for forgiveness. FTE employees are those who work at least 40 hour per week. An employee who works 20 hours per week would be considered 0.5 FTE.

b. *Reduction in wages and salaries*

A reduction in an employee's salary or wages in excess of 25% will result in a reduction in the loan forgiveness amount. The borrower must reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25% of the salary or wage paid between January 1, 2020 and March 31, 2020. For example, if a borrower reduces an employee's weekly salary from $1,000 to $700 during the covered period, and that employee continues working 40 hours per week, the first 25%, or $250, would be eligible for forgiveness, but the extra 5%, or $50 per week, would be subtracted from the forgiveness amount. Thus, the loan forgiveness amount would be reduced by $400, or $50 for the eight-week period.

c. *Exceptions*

If certain employee salaries and wages were reduced between February 15, 2020 and April 26, 2020 (the safe harbor period) but the borrower eliminates those reductions by June 30, 2020 or earlier, the borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required due to reductions in salaries and wages. The same is true with regard to a reduction in FTE employees. Borrowers will not be penalized for employees who resign or reduce their hours voluntarily, or for for-cause terminations. Moreover, borrowers will not be penalized if they offer to re-hire an employee "for the same salary and same number of hours" and the employee declines the offer, but the borrower must document the request in writing.

Documentation

Borrowers will also need to provide documentation verifying payroll information, including:

- Bank account statements or third-party payroll service provider reports
- Tax forms – payroll tax filings; state quarterly business and individual employee wage reporting and unemployment insurance tax filings
- Payment receipts, cancelled checks, or account statements documenting employer contributions to health insurance and retirement plans

And for nonpayroll information, you will need to send documents verifying that the obligations were assumed prior to February 15, 2020, including:

- Business mortgage interest payments – Copy of lender amortization schedule or lender account statements
- Business rent or lease payments – Copy of current lease agreement, or lessor account statements
- Business utility payments – Copy of invoices and receipts or account statements verifying payment

Borrowers are required to maintain, but are not required to submit other documentation, which includes:

- Documentation verifying the salary/wage information of each employee listed on the PPP Schedule A Worksheet Tables 1 and 2
- Documentation regarding employee job offers and refusals, firings for cause, voluntary resignations, and written requests by employee for reductions in work schedule
- Documentation supporting the PPP Schedule A Worksheet "FTE Reduction Safe Harbor"

For more information on PPP Loan Forgiveness, visit the the Treasury Department website at https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses.

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