



## SBA RELEASES PPP LOAN FORGIVENESS APPLICATION

On Friday, May 15, 2020, the SBA released its Paycheck Protection Program (PPP) Loan Forgiveness Application. The application and its instructions answer some of the more significant outstanding questions needed to help businesses utilize their PPP funds and maximize forgiveness. Below are some of the key highlights from the application. You can find the current forgiveness application [at this link](#).

### COVERED PERIOD OR ALTERNATIVE PAYROLL COVERED PERIOD

As previously indicated, the Covered Period is the 8 week (56 day) period from the day the funds are received. The application provides an alternative, for the purpose of convenience, related to Payroll Costs. The Alternative Payroll Covered Period allows the 8 week period to correspond to the beginning of the first payroll cycle after the day the funds are received. The Alternative Payroll Covered Period, if elected, must be used throughout the application when it is referenced by the application or instructions.

The Covered Period must be used throughout the application when only the Covered Period is referenced. This relates to the sections of the application that include Non-Payroll Costs.

### PAID OR INCURRED

Eligible Payroll Costs are those that are paid OR those that are incurred in the Covered Period or Alternative Payroll Covered Period. Payroll Costs are considered paid the date that paychecks are provided to employees or the day that the ACH transaction is originated. Payroll Costs are considered incurred on the day that the pay is earned. Payroll Costs that are incurred during the pay cycle that overlaps the ending date of the 8 week period are eligible for forgiveness as long as the payroll is paid on its next regular payroll date. This eliminates the need to perform a cut-off payroll on the last day of the 8 week period.

Eligible Non-Payroll Costs are those that are paid OR incurred in the Covered Period and paid on or before the next regular billing date. We believe the regular billing date is reflected in the due date of the payment as shown on the invoice, lease terms, or loan documents, etc. Specifically stated in the instructions is that eligible Non-Payroll Costs do not include the prepayment of business mortgage interest. Again, this eliminates the need to pay a partial month of utilities in order for them to be considered paid in the Covered Period.

Based on the current guidance, this appears to allow costs that were incurred prior to, but paid during, the Covered Period or Alternative Payroll Covered Period to be included in the forgiveness calculation. This would also allow those costs that were incurred during, but paid after, the Covered Period or Alternative Payroll Covered Period can also be included in the forgiveness calculation. It will be crucial to make sure these amounts are paid timely.

### REAL AND PERSONAL PROPERTY

Eligible Non-Payroll Costs include business mortgage interest, business rent and lease payments, and business utilities. The amounts for business mortgage interest and business rent or lease payments include amounts for both Real and Personal property. These obligations must have been in force before February 15, 2020. Documentation supporting that these agreements as well as utility service agreements were in force prior to February 15, 2020 will be required with the forgiveness application.

### OWNERS

The instructions for the application include a new limitation on the business owners (owner-employee, a self-employed individual, or general partners). The amount capped is \$15,385 (\$100,000 annually) or the 8-week equivalent of the applicable compensation



in 2019, whichever is lower. This appears to prevent an owner from increasing their compensation up to \$100,000 annually for the purposes of forgiveness. This statement is specifically listed in the certifications required to be signed by the business.

Additionally, the application and instructions do not appear to provide any further guidance on the health insurance and retirement of the owner(s). The instructions reference the Interim Final Rule posted on April 14, 2020 which indicates that self-employed individuals (sole-proprietors and general partners) are limited to the cap of \$15,385 (\$100,000 annually) including any amounts of health insurance and retirement as these owners are not considered employees. Whereas, owners of a corporation are considered employees and the cap is applied the same as with non-owner employees before considering the amounts of health insurance and retirement.

## LIMITATIONS

Several limitations may come into play once you have determined the potential maximum amount of forgiveness. The first limitation to be applied relates to any wage reduction. Any reduction for employees with a greater than 25% wage reduction is determined as a dollar amount. Secondly, there is a potential reduction based on the number of full-time equivalent (FTE) employees. FTE calculations, based on 40 hours, must be performed for multiple periods. The application provides a simplified option for the FTE calculation with 40+ hours being 1.0 FTE and anything less than 40 hours being 0.5 FTE. In addition to the already existing options for eliminating any reduction of FTEs (FTE Reduction Safe Harbor), the application includes a new option with the ability to compare the end of the covered period to January 1, 2020. Lastly, there may be a limitation on the forgiveness based on the amount of PPP funding being used for Payroll Costs; at

least 75% of the forgiven amount must be used toward Payroll Costs.

As previously released, the application allows for an exception from the FTE reduction calculations for employees that were made a good-faith written offer to be rehired and the employee rejected the offer. The application instructions also extend this exception to employees who were fired for cause or who voluntarily resigned or requested a reduction in hours. These exceptions apply if the position was not filled by a new employee.

## DOCUMENTATION

The application instructions also include details on the types of support and documentation that will need to be submitted with the application. There are also additional documents that will need to be maintained but not submitted.

## QUESTIONS?

The above summary includes some of the more significant observations from the application. We anticipate the SBA and Treasury will continue to release clarifications and FAQs to provide additional guidance in the coming weeks. We will continue to evaluate, interpret and provide information as it becomes available.

A good team is of paramount importance during these uncertain times. Landmark is prepared to provide guidance and assistance as needed. We are here to help! If you have questions, [contact us](#) today or visit the [COVID-19 Resources](#) page on our website. We look forward to hearing from you.