

May 2020

Client Advisory

SBA Issues Important Paycheck Protection Program Loan Forgiveness Application and Instructions

The Small Business Administration (SBA) has issued important guidance to Paycheck Protection Program (PPP) borrowers seeking loan forgiveness. A loan forgiveness application has been posted on the SBA website and borrowers will be required to complete this application and submit it to their lender (or the lender servicing the PPP loan) in order to be considered for total or partial loan forgiveness. The application can be found at the link below and PPP borrowers should be aware of the following points set forth in the instructions:

- The SBA has confirmed that the **Covered Loan Period** begins on the date that PPP loan proceeds were disbursed to a borrower.
- With respect to payroll costs only, the SBA is allowing borrowers with a biweekly (or more frequent) payroll schedule to use the first day of their first pay period after receiving PPP loan proceeds to start the eight-week period (**Alternate Payroll Covered Period**).
- **Payroll costs** are considered to be paid on the day that paychecks are distributed, or the day on which the Borrower originates an ACH credit transaction to pay such costs. Payroll costs are considered incurred on the day that the employee's pay is earned. Forgiveness can still be obtained for those payroll costs incurred, but not paid during the loan period if such costs are paid on or before the next regular payroll date.
- Eligible **non-payroll costs** include interest on covered mortgage obligations, rent and business utility payments. It is important to note that the application guidance includes "lease agreements for real or personal property" in the definition of eligible rent expenses, so expenses associated with personal property leases, i.e. equipment and vehicles, in force as of February 15, 2020 can be included as eligible costs for PPP forgiveness purposes. Utility expenses are defined to include electricity, gas, water, transportation (no further guidance provided on what is included in this category), telephone and internet access costs.
- Full-time equivalency ("**FTE headcount**") with respect to employee headcount is defined as 40 hours in the application documents.
- The application and instructions confirm that **exceptions to the FTE headcount** reductions exist and include:
 - Employees who refuse to return to work after receiving a written offer of re-employment
 - Employees who are terminated for cause
 - Employees who voluntarily resign
 - Employees who requested (and received) a reduction in their hours
- Following Treasury Secretary Mnuchin's statement that all PPP **loans in excess of \$2,000,000 will be reviewed**, and the guidance consistent to that point in "Frequently Asked Questions" subsequently promulgated by the SBA, the application does require applicants for forgiveness to check a box if they (along with affiliates) received a loan in excess of \$2,000,000.

The application document and instructions can be found [here](#).

Borrowers to the PPP who intend to apply for loan forgiveness should carefully review this information and reach out to their Archer attorney – or any member of Archer's COVID-19 Task Force – with questions.

Please reach out to your Archer contact or any member of Archer's COVID-19 Task Force with any questions you may have.

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