

SBA RELEASES PPP LOAN FORGIVENESS APPLICATION – STILL AWAITING PROMISED GUIDANCE AND REGULATIONS

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The SBA and Treasury published the much anticipated PPP loan forgiveness application late last Friday evening. The [application](#) itself provides more guidance than contained in the existing FAQs and regulations relating to use of PPP loan proceeds and eligibility for forgiveness and includes new certifications. Absent from the form is any requirement to address the necessity of the loan or to report revenue levels, profitability or other evidence of the impact of the economic uncertainty brought on by the COVID-19 pandemic.

In its [press release](#) announcing release of the form, Treasury and the SBA stated that the form and its instructions reflected measures designed to reduce compliance burdens and simplify the process for borrowers. Those measures relate primarily to calculation of payroll costs and step-by-step instructions to calculate eligibility for loan forgiveness. In addition, the form provides that eligible non-payroll costs (so long as not in excess of 25% of the total forgiveness amount) can include payments of interest on any business mortgage obligation (real or personal property) incurred before February 15, 2020; business rent or lease payments on leases in effect prior to February 15, 2020; and covered utility payments so long as for services that began before February 15, 2020. For a more thorough discussion of the guidance provided by the application form, see our analysis [here](#).

Interestingly, if the borrower and its affiliates received PPP loans in excess of \$2 million, the borrower must “check the box”. We assume this is to flag those applications the SBA has said will be reviewed “to further ensure PPP loans are limited to eligible borrowers in need.” The application form includes a page of representations and certifications by the borrower, including an acknowledgment that the SBA may request additional information “for the purposes of evaluating the Borrower’s eligibility for the PPP loan and for loan forgiveness.” And in the documentation requirements provided in the instructions, there is a list of documents that each borrower must maintain but is not required to submit with the forgiveness application. Included is “documentation supporting the Borrower’s certifications as to the necessity of the loan request and its eligibility for a PPP loan,” as well as “documentation demonstrating the Borrower’s material compliance with PPP requirements.”

The SBA is still expected to issue regulations and further guidance for borrowers to complete these applications and for lenders on their responsibilities in this process. Public companies are also still awaiting further guidance on the SBA review process for loans in excess of \$2 million and what will be required to support their good faith certifications that the loan request was “necessary”.

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