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## SMALL BUSINESS ADMINISTRATION RELEASES PPP LOAN FORGIVENESS APPLICATION

May 17, 2020

On May 15, 2020, the Small Business Administration (“SBA”), in consultation with the Department of the Treasury, released the Paycheck Protection Program (“PPP”) Loan Forgiveness Application (the “**Application**”), together with instructions for the Application. The Application and instructions can be found at:

<https://content.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf>.

The SBA has indicated that it will also soon issue regulations and guidance to further assist borrowers as they complete their Applications, and to provide lenders with guidance on their responsibilities.

**We strongly encourage businesses that have received a PPP loan to review the Application and instructions, and consult with an accountant or attorney now, to ensure PPP loan proceeds are being spent in a way that will maximize loan forgiveness.** If you have any questions about the Application please contact us. We are available to discuss how loan forgiveness and loan forgiveness reductions are calculated.

Set forth below are some key takeaways from our initial review of the Application and instructions. We are further reviewing the Application and expect to release more detailed guidance in the near future. We will also provide information regarding the SBA’s promised regulations and guidance as they become available.

- **Alternative Payroll Covered Period:** A borrower with a bi-weekly (or more frequent) payroll schedule can choose to calculate its eligible payroll costs using the 8-week period following the date of the PPP loan disbursement (the “**Covered Period**”), or an alternative 8-week period that begins on the first day of its first pay period following the date of the PPP loan disbursement (the “**Alternative Payroll Covered Period**”). For example, if a borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is Sunday, April 26 and the last day of the Alternative Payroll Covered Period is Saturday, June 20.
- **Calculating Full-Time Equivalent Employees:** Full-time equivalent employees (“**FTEs**”) should be calculated using a 40 hour workweek. To calculate average FTEs, for each employee the borrower should take the average number of hours paid per week, divide by 40, and round the total to the nearest tenth. The maximum FTE for each employee is capped at 1.0.
- **Eliminating Reductions in FTEs:** A borrower has until June 30, 2020 to eliminate any reductions in its FTEs made between February 15, 2020 and April 26, 2020. A borrower is exempt from a reduction in loan forgiveness based on FTEs if the borrower restores its FTE

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levels by not later than June 30, 2020 to its FTE levels in the pay period that included February 15, 2020.

- **FTE Reduction Exceptions:** A borrower's loan forgiveness amount will not be reduced due to FTE reductions if the borrower made a good faith written offer to rehire an employee during the Covered Period or the Alternative Payroll Period, as applicable, which was rejected by the employee. A borrower's loan forgiveness amount will also not be reduced if, during the Covered Period or the Alternative Payroll Covered Period, an employee: (a) was fired for cause; (b) voluntarily resigned; or (c) voluntarily requested and received a reduction in hours.
- **Eligible Nonpayroll Costs:** Eligible nonpayroll costs must be (i) paid during the Covered Period or (ii) incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period. Eligible nonpayroll costs cannot exceed 25% of the total forgiveness amount and are limited to the following items: (a) payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020; (b) business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020; and (c) business payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access, which service began before February 15, 2020.
- **Eligible Payroll Costs:** Payroll costs incurred but not paid during the borrower's last pay period of the Covered Period or Alternative Payroll Covered Period, as applicable, are eligible for forgiveness if paid on or before the next regular payroll date. Otherwise, payroll costs must be paid during the Covered Period or the Alternative Payroll Covered Period. Payroll costs are considered paid on the day that paychecks are distributed or the day the borrower originates an ACH transaction, and are considered incurred on the day that the employee's pay is earned. For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period or Alternative Payroll Covered Period, as applicable.
- **Backup Documentation:** The Application and instructions detail what documents a borrower will need to submit to its PPP lender along with the Application. The Application also details what documents a borrower is required to maintain but is not required to submit to its PPP lender. We strongly encourage businesses to review this list and begin compiling required documentation.