

LAW OFFICES
Trister, Ross, Schadler & Gold, PLLC

1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR

WASHINGTON, D.C. 20009

PHONE: (202) 328-1666

FAX: (202) 204-5946

www.tristerross.com

MICHAEL B. TRISTER
(1941-2018)

GAIL E. ROSS
B. HOLLY SCHADLER
LAURENCE E. GOLD
ALLEN H. MATTISON†
DAVID M. WACHTEL*
JESSICA ROBINSON†
KAREN A. POST

†ALSO ADMITTED IN MARYLAND

*ALSO ADMITTED IN
CALIFORNIA AND MARYLAND

KATHY S. STROM+
Of Counsel

+ALSO ADMITTED IN
NEW YORK AND MARYLAND

JOSEPH W. STEINBERG‡
‡ALSO ADMITTED IN MINNESOTA

SARAH E. NASON*
JOHN O. SAWYKO*
*ALSO ADMITTED IN NEW YORK

May 22, 2020

PAYCHECK PROTECTION PROGRAM LOAN FORGIVENESS

Note: We are periodically updating all of our public coronavirus materials as new information becomes available. For updated versions and memos on new topics, please visit <https://tristerross.com/update/>.

The Small Business Administration (SBA) has released the loan forgiveness [application](#) for borrowers of Paycheck Protection Program (PPP) loans. This application process is necessary in order to convert a PPP loan into what is effectively a government grant to the organization. Loan recipients should act now to begin gathering the required documentation, and file the application as soon as possible after completing the payments for which forgiveness is sought. Meanwhile, we and borrowers should monitor further developments regarding this process, in the event that SBA modifies the application or issues additional guidance before borrowers apply for loan forgiveness.

The application consists of the following four components and their instructions:

- Loan Forgiveness Calculation Form (must be submitted)
- Schedule A (must be submitted)
- Schedule A Worksheet (must be prepared and kept in records)
- Borrower Demographic Form (optional to submit)

The Loan Forgiveness Calculation Form and Schedule A must be submitted to the lender for processing, along with documentation verifying payroll costs, the number of full-time-equivalent employees during the applicable pre-loan period, the existence of non-payroll obligations (mortgage interest, rent, utilities) prior to February 15, 2020, and payments on those obligations during the loan's covered period. The Schedule A Worksheet is not submitted as part of the forgiveness application, but must be retained in the borrower's records, along with other documentation described in the application package, for six years after the date the loan is forgiven or repaid in full. The Borrower Demographic Form is optional and may be submitted as part of the forgiveness application at the borrower's discretion.

The application provides guidance on a number of outstanding questions, including detailed instructions for calculations. Notably:

- Borrowers have two choices when calculating payroll costs eligible for forgiveness. They may use either:
 - The “covered period,” meaning the eight-week (56-day) period starting on the PPP loan disbursement date; or
 - The “alternative payroll covered period,” under which borrowers with a bi-weekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week period that begins on the first day of their first pay period after the PPP loan disbursement date.
- To be eligible for forgiveness, payroll costs must be either *incurred* or *paid* during the covered period or the alternative payroll covered period. Payroll costs incurred before but paid during the covered period or the alternative payroll covered period are eligible for forgiveness. Payroll costs incurred but not paid during the last pay period of the covered period or alternative payroll covered period are eligible for forgiveness only if paid on or before the next regular payroll date.
- Non-payroll costs eligible for forgiveness are those *paid* during the covered period or *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. Borrowers are not required to report non-payroll costs that they do not want to include in the forgiveness amount.
- Reductions in salaries of up to 25% during the covered period as compared to the January 1 – March 31, 2020 period will not reduce the amount eligible for forgiveness.
- The amount eligible for forgiveness will not be reduced due to reductions in full-time equivalencies resulting from:
 - Any positions for which the borrower made a good-faith, written offer to rehire an employee during the covered period or alternative payroll covered period and which was rejected by the employee (as covered in [FAQ #40](#)); or
 - Any employees who during the covered period or alternative payroll covered period were fired for cause, voluntarily resigned, or voluntarily requested and received a reduction in their hours.
- The forgiveness amount will be the *smallest* of the following:
 - The total loan amount;
 - Forgivable payroll plus non-payroll costs, minus applicable salary reductions, multiplied by the FTE Reduction Quotient, which is the average number of FTE employees during the covered period or alternative payroll covered period divided by the average number of FTE employees during the borrower’s chosen pre-loan reference period (essentially, the percentage of pre-pandemic full-time employees retained during the covered period or alternative payroll covered period); or
 - Payroll costs eligible for forgiveness divided by 0.75 (this calculation ensures that at least 75% of the forgiveness amount consists of payroll costs).

Previous guidance indicated that SBA would review all PPP loans of over \$2 million. Any

borrower that, together with its affiliates, received PPP loans in excess of \$2 million must check a box on the application. Presumably, this will trigger the SBA review.

The application also requires borrowers to make a number of certifications regarding the accuracy and veracity of the forgiveness application, including acknowledgement that the federal government may pursue civil or criminal fraud charges if the loan funds were knowingly used for unauthorized purposes, and that making a false statement to obtain forgiveness of an SBA-guaranteed loan is punishable by imprisonment and substantial fines.

NOTE: This document does not constitute legal advice. For application of the matters discussed in this document to a particular situation, please consult legal counsel.