



Navigating the SBA's PPP Loan Forgiveness



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INFORMATION SUBJECT TO CHANGE BASED ON FURTHER
GUIDANCE PROVIDED BY SBA OR OTHER FEDERAL
AGENCIES.



Rule Sources

- Coronavirus Aid, Relief, and Economic Security (CARES) Act
 - <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.xml>
- U.S. Small Business Administration Interim Final Rules (Yes, that's what it's called). Implements and provides guidance for Sections 1102 and 1106
 - <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
- FAQs provided by SBA
 - <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>
- PPP Loan Forgiveness Application
 - <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf>
- Interim Final Rule on Loan Forgiveness
 - <https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf>
- HR 7010 – PPP Flexibility Act of 2020 – Passed by House and Senate
 - <https://www.congress.gov/bill/116th-congress/house-bill/7010/text>

Forgiveness Application Needs

- PPP Loan Amount and disbursement date
- Disclosure if EIDL Advance received. Reduces forgiveness.
- Employee counts: time of loan app and time of forgiveness app
- Disclosure of Pay frequency schedule
- Checkbox for \$2 Million borrower level (affiliates included)
- More Reps and Certifications signed by borrower.
- 6 year document retention requirement.

Requesting Forgiveness (Wait until after June 30th)

- Submit Loan Forgiveness Application to Lender
 - Due Date may increase to 10 months after CP under New Act.
 - Submit the PPP Loan Forgiveness Calculation Form
 - Submit PPP Schedule A and Substantiation
 - Lender has 60 days to review and make a decision; SBA has another 90 days after that. Total of 5 months.
- Begin to gather substantiation needed now.
- PPP Schedule A Worksheet is not required to be submitted, but must be completed regardless.
- PPP Borrower Demographic Information is optional

Documentation Requirements

- The loan forgiveness application details documents required to be submitted.
- Interim Final Rule has a section highlighting requirements as well.
- The more complete your submitted forgiveness application is, the less burdensome it will be for lenders to review.

8-Week (56 days) Covered Period

- Covered Period: Day 1 = same as PPP Loan Disbursement Date; runs for 56 days. Ex. Begins on a Monday, ends on a Sunday.
- Alternative Payroll Covered Period:

Borrowers with Bi-Weekly (or more frequent) payroll schedules may elect to adjust their Covered Period to begin on the first day of their next Pay Period.

 - Borrowers who make this election must apply the Alternative Period in calculations where referenced.
 - If elected, applies to Salary and FTE calculations.
 - Does not apply to Non-Payroll Costs. Creates two separate measurement periods.

Forgiveness Amount

Forgiveness Amount is defined as the LESSER OF:

- PPP Loan Amount,
- Eligible Payroll Costs / 75% (eliminates Cliff), OR
- Total Eligible Payroll and Non-Payroll Costs reduced by the Total Salary/Hourly Wage Reduction multiplied by the FTE Reduction Quotient

Eligibility

“Costs incurred AND payments made” (Sec. 1106(b)) during the period changed...

Flexibility Added: Changed to “incurred OR paid” on Forgiveness Calculation
Instructions for Line 1. A play on words may have big impact as indicated in IFR.

Eligibility

- Payroll Costs
 - Eligible for forgiveness for PR costs paid AND PR costs incurred during the 56 day Period.
 - Payroll costs are “paid” on the date paychecks are distributed or the borrower originates an ACH credit transaction (even if earned prior to covered period?)
 - Payroll Costs are “incurred” on the day the E/E’s pay is earned.
 - Wages earned through final day of covered period can be paid after covered period on or before the next regular payroll date. The above could mean two independent tests. Guidance here would clarify.

Eligibility

- Non-Payroll Costs (cannot exceed 25% of the total forgiveness amount)
 - Covered Rent, mortgage interest and Utility payments must be paid during covered period (even if incurred prior to...) OR,
 - Incurred during covered period and paid before the next regular billing date
- Count Payroll and Non-Payroll Costs BOTH Paid and incurred only once.

Payroll Cost Eligibility

- Decide on Covered Period or Alternative Covered Period
- Day 1 – Payroll paid on or after Day 1 that includes wages earned prior to Day 1 – IS THIS ELIGIBLE?
- Day 56 – Include hours worked through this day even if paid after, but no later than next pay period.
- \$100,000 cap as pro-rated (\$15,385 for 8 weeks).

Payroll Cost Eligibility

- Non-Cash Compensation PR Costs allowed for:
 - ER contributions for EE health insurance
 - ER contributions to EE retirement plans
 - ER state and local taxes assessed on EE comp.
- “*Owner-Employees*” have separate rules.
- *Self-employed* individuals and Partners are excluded since they are not “employees”.
- Provides for different treatment depending on business structure.

Owner-Employees

- PPP Schedule A separates Owner's Comp from other employees
 - Owners are not included in Table 1 or 2
- *Owner-Employees* forgiveness requested is capped at lesser of \$15,385 OR 8/52 of 2019 *Cash compensation*,
 - AND (non-cash compensation) employer Health ins + employer retirement contributions made on their behalf
 - Prevents giving yourself a raise / bonus to cover costs.
- *Owner-Employees* will not enter into the calculation of the FTE reduction or reduction in wages.
- It is not clear if attribution rules apply here for related parties on payroll.
- Total Cap applies in total "across all businesses".

Self-Employed

- Schedule C filers are capped by the amount of their *Owner Compensation Replacement*, calculated based on 2019 net profit.
 - Wages and benefits paid for employees count – See IFR Issued 4/14/20
- General partners are capped by the amount of their 2019 net earnings from self-employment less Sec. 179 deduction and unreimbursed partnership expenses.
- No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals.

Non-Payroll Cost Eligibility

- Covered Mortgage Interest only; Not Principal; debt must be in place before 2/15/20 – covers real or personal property debts
 - Office location, warehouse purchased, business automobiles or fleet
- Covered Rent obligations in force before 2/15/20 for real or personal property. *“pursuant to lease agreements”*.
- Covered Utilities for services beginning by 2/15/20 includes electricity, gas, water, transportation (gas for business vehicles?), telephone, or internet access.
- Besides Pre-paid Interest being specifically disallowed, are other Prepayments allowed under “paid” or “incurred” model? Seems likely under IFR Page 12 Example. Uses word “In addition”...

PPP Schedule A Worksheet

- **Table 1** – Lists E/E's who were employed during Covered period AND paid < \$100K annualized rate for ALL pay periods in 2019 OR were NOT employed at any point in 2019.
 - Removes fears about salary reductions (in addition to FTE reduction) for former EE's not paid during Covered period thus, not paid 75% of prior period.
 - Very Borrower Friendly. Only a reduction of annualized salary or pay rates.
 - Average FTE – each single EE capped at 1.0 for 40 hour week.
 - Salary / Hourly Wage Reduction - > 25% only
 - See Instructions for PPP Sch. A Worksheet Pg. 7-8 Steps 1-3 to determine reduction for each employee listed.

PPP Schedule A Worksheet

- **Table 2** –Lists E/E's who were employed during Covered period AND paid > \$100K annualized rate for ANY pay period in 2019.
 - List Cash Compensation paid or incurred during covered period or Alternative Period; capped at \$15,385 per E/E.
 - Average FTE – capped at 1.0 for 40 hour week.
 - Salary / Hourly Wage Reduction – N/A

Salary / Hourly Wage Reduction

- Compare EACH employee making less than \$100,000 annually (Table 1) and compare their annual salary OR hourly wage for the 8-week period against 1st quarter annualized wages. Follow Instructions for PPP Schedule A Worksheet to Line 5 of PPP Loan Forgiveness Application.
- Employee #1 – determine avg. annual salary based on avg. wage rate for 1Q 2020 by pay period.
 - Ex. Q1 Pay = \$10,000 / 13 weeks = \$769.23 / wk
 - On a 52 week year - \$40,000 annually

Salary / Hourly Wage Reduction

- Employee #1 – 8-week period Pay = $\$4,500 / 8 \text{ weeks} = \$562.50 / \text{wk}$
- On a 52 week year - $\$29,250$ annually
- Divide $\$29,250 / \$40,000 = 73.125\% = \text{Fail for this employee}$
- Reduce amount of Loan forgiven dollar for dollar by $\$115$
 - $\$40,000 \times 75\% = \$30,000 - \$29,250 = \750
 - $\$750 \times 8 = \$6,000 / 52 = \$115$

Check box on PPP Schedule A Line 3 if NO Reductions and enter "0" on Line 3.

Salary/Hourly Wage Reduction Safe Harbor

If Borrower meets Circumstances, reduction of Loan Forgiveness is reduced:

1. Applies only if annual salary OR hourly wage is reduced from 2/15/20 – 4/26/20 and,
2. That rate is restored by 6/30/20; by employee, no cliff effect. Is this just for a moment in time leading to 1-day raises to meet the safe harbor? Guidance please...

Must complete the PPP Schedule A worksheet to determine based on instructions provided.

Salary/Hourly Wage Reduction Exclusion

To ensure that borrowers are not doubly penalized, the salary/hourly wage reduction applies **ONLY** to the portion of the decline in employee salary and wages that is **NOT** attributable to the FTE Reduction.

- Ex. In IFR – E/E drops from 40 hours to 20 hours per week. Pay rate stays the same. Because the drop in pay is entirely attributable to the FTE reduction, borrower is not required to conduct a wage reduction calculation for that E/E.

FTE Reduction Quotient

DEFINED: Total Average FTEs (Tables 1 + 2)/ Average FTE during borrower's chosen reference period (not to exceed 1.0)

Average FTEs (for each employee) per week for 8-week period. Enter on PPP Schedule A Worksheet (Tables 1 & 2). Then, choose your reference period; The Lesser of:

The avg. FTEs per week – 2/15/19 – 6/30/19 OR

The avg. FTEs per week – 1/1/20 – 2/29/20

Enter on Line 11 of PPP Schedule A.

FTE Reduction Quotient

FTEs equal the avg. number of employees you have over a given period
Divide # of hours by # of weeks. 40 Hour work week confirmed in Instructions.
Max amount per E/E is 1.0.

Ex. $8,160 \text{ hours} / 8 \text{ weeks} / 40 \text{ hrs} = 25.2 \text{ FTEs}$

- Round to nearest tenth
- Simplified method allowed for 1.0 at > 40 hours or 0.5 for < 40 hours
 - Choose the option that maximizes your Quotient.

NOTE: The FTE Quotient comes after reduction for Salary/Hourly Wages, thus the Salary/Hourly Wage reduction gets reduced proportionately by the FTE Quotient. This is borrower favorable.

FTE Reduction Safe Harbor

If Borrower meets both Circumstances, reduction of Loan Forgiveness is reduced:

1. If the FTEs drop from 2/15/20 – 4/26/20 and,
2. The reduction is restored by 6/30/20 to 2/15/20 levels. Is this just for a moment in time? Will June 30th be the largest “new hire” day of the year?
Guidance...
3. Safe harbor is met to extent ANY FTE reductions are eliminated. Not a Cliff?

FTE Reduction Second Simple Safe Harbor

PPP Schedule A provides after Line 10 a checkbox to allow a borrower to skip the complex math for FTEs if they have NOT reduced:

1. The Number of Employees and
2. Average paid hours

“between” 1/1/20 and the end of the Covered Period.
It is not clear if this is a 2 day test or provides for zero volatility throughout the range...

FTE Reduction Exceptions

Borrower's loan forgiveness is NOT reduced by FTE reductions in the following cases:

- **Written** re-hire offers made during covered period rejected by E/E. Borrower must inform State Unemployment Ins.
- Any E/E fired for cause
- Any E/E who voluntarily resigned
- Any E/E who voluntarily requested a reduction in hours.
- Documentation will be required. Get it in writing!

Pending Legislation Watch

H.R. 7010 (PPP Flexibility Act of 2020) passed the House and Senate amends forgiveness provisions of the CARES Act by:

- Extending repayment period from 2 to 5 years
- Repayment Period begins on date forgiveness is determined and remitted to lender instead of 6 month deferral.
 - no later than 10 months after the CP ends if you fail to apply for forgiveness.
- 1% interest stays.

Pending Legislation Watch

H.R. 7010 (PPP Flexibility Act of 2020) passed the House and Senate amends forgiveness provisions of the CARES Act by:

- Extends Covered Period to 24 weeks, but provides for an election to keep the Original 8-week period.
 - No mention of Alternative period as provided in current Application.
- Keeps an FTE reduction in place with certain exemptions for inability to rehire and replaces original 6/30 replenishment date with 12/31/20.
- Requirement that borrower SHALL use 60% of loan proceeds for payroll costs and MAY use up to 40% for non-payroll costs. Cliff effect?
- Bill also provides for a deferral of ER Social Security payroll taxes

Pending Legislation Watch

Things to consider:

- 56 days just got stretched to 168 days.
- Sal/Hrly Wage levels maintained at least 75% for 168 days.
- Plan to extend your 2020 Business Tax return waiting on Forgivable Amount to be confirmed.
- If borrower reaches max forgiveness before 24 weeks runs out, can they apply early if Wage and FTE levels have been maintained?

Pending Legislation Watch

Things to consider:

- Since Payroll cannot exceed an annual salary of \$100,000, as *pro-rated for the Covered Period*, an increase to 24 weeks should make the forgivable payroll cap increase to \$46,154 per Employee. 24/52
 - Will this be increased for Owner-Employees?
 - Will this be increased for Sole Proprietors and Partners?
- This covered period stretch was implemented for several reasons:
 - The Pandemic lasted longer than the two months originally hoped
 - Many Businesses such as Restaurants / Bars have not been able to re-open at full levels.

Pending Legislation Watch

Things to consider:

- If you had to spend 75% on payroll in 8-weeks, who can't spend 60% in 24 weeks?
 - High Rent, low payroll businesses will benefit from the reduced %.
- For some businesses electing to keep the 8-week CP should not be ruled out.
 - FTE levels must be maintained at 2/15/20 levels unless you are unable to re-hire. Will require written documentation.
 - Having 24 weeks (that's 5 ½ Months) to maintain FTE counts could be burdensome for some borrowers especially if most of your PPP money has already been spent and future operations are still uncertain.
 - IF you have an FTE or Wage drop, you now must wait until December to prove restoration instead of the original June timeline. This may be burdensome and risky to some.
 - Will an increase in allowable wage levels provide a buffer if FTE counts cannot be maintained for 24 weeks?

Pending Legislation Watch

Things to consider:

- FTE exemption provided if you are able to document:
 - An inability to re-hire EE's employed on 2/15/20
 - An inability to hire similarly qualified EE's for unfilled positions on or before 12/31/20, or
 - your business is unable to return to the same level of business activity you experienced at 2/15/20 due to CDC or Government regulatory changes.
 - How hard will this be to prove?
- Businesses that need debt off their Balance Sheet for other Debt Covenant Calculations at year end for Banking requirements should consider 8-weeks.
- Expect Treasury to issue updated IFR and hopefully issue FAQ's along with changing the Application and definitions.

Taxation of Forgiven Debt

- Cancelled debt is generally taxable however,
- CARES Act Section 1106(i) excludes from gross income the debt forgiven under Section 1106(b).
- IRS Released Notice 2020-32 that Code Section 265 disallows deductions otherwise allowable which is allocable to income exempt from tax.
- Members of Congress have vowed to fix the IRS ruling legislatively to allow deductions. Stay tuned.

Q & A

Follow up Questions after Webinar:

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The Math...The Application

FACTS...For example

1. Amount Used for Payroll Costs -	\$ 71,000
2. Amount used for other eligible Costs -	\$ 24,000
3. Total Salary/Hourly Wage Reduction	<u>\$ (2,500)</u>
4. Application – Line 6	\$ 92,500
5. FTE Reduction Quotient	0.9
6. Loan Amount	\$100,000

The Math...The Application

Example continued...

Forgiveness Amount is the LESSER OF:

Line 8 – Modified Total = $\$92,500 \times 0.9 = \$83,250$

Line 9 – PPP Loan Amount = $\$100,000$, or

Line 10 – PR Costs = $\$71,000 / 75\% = \$94,667^*$

- - Would be the Forgiveness amount if Wage and FTE safe harbors were met.