



SBA Issues PPP Loan Forgiveness Guidance

In prior alerts, we reported on the Paycheck Protection Program (PPP) established by the CARES Act. The Small Business Administration (SBA) has now issued much awaited PPP [loan forgiveness regulations](#), as well as [regulations on SBA review of PPP loans](#). These regulations, along with the PPP [loan forgiveness application](#), which includes details on calculating and documenting the requested loan forgiveness amount, clarify key points on the following topics:

- [Payroll Costs](#)
- [Nonpayroll Costs](#)
- [Reductions in Loan Forgiveness](#)
- [Loan Forgiveness Process](#)
- [SBA Review of Loans](#)



Payroll Costs

What is the impact of failing to spend at least 75 percent of the loan proceeds on payroll costs?

At least 75 percent of the requested loan forgiveness amount must be spent on payroll costs. Failure to spend at least 75 percent of the loan proceeds on payroll costs will reduce the forgiveness amount but will not disqualify the borrower from receiving forgiveness altogether. Loan amounts that are not forgiven must still be used for the purposes permitted by the program, which may include payroll following the covered period.

When must payroll costs be paid or incurred to be eligible for forgiveness?

Payroll costs paid or incurred during the eight consecutive week “covered period” beginning on the date the lender disburses the loan proceeds to the borrower are eligible for forgiveness. A borrower with a bi-weekly or more frequent payroll cycle may instead opt to start the eight-week period on the first day of the first payroll cycle following the loan disbursement date (the “alternative covered period”). To qualify for forgiveness, payroll costs incurred during the applicable eight-week period must be paid no later than the first regular payroll date after the end of the eight weeks.

When are payroll costs considered paid or incurred?

Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction. Payroll costs are considered incurred on the day that the employee’s pay is earned. For employees who are not performing work but are still on the





borrower's payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).

Are hazard pay and bonuses eligible for forgiveness?

Yes. Hazard pay and bonuses are eligible for loan forgiveness – as are salary, wages, or commission payments to furloughed employees – as long they do not cause the employee's annual salary, as prorated for the covered period, to exceed \$100,000.

What limits are there on loan forgiveness for owner-employees and self-employed individuals?

The amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is limited to the lesser of 8/52 of 2019 compensation or \$15,385 per individual. In addition, owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf. General partners are capped by the amount of their 2019 net earnings from self-employment (subject to certain reductions) multiplied by 92.35 percent. No additional forgiveness is available for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners.

How are payroll costs defined?

As detailed in PPP regulations issued in April, payroll costs include compensation to employees whose principal place of residence is the U.S. in the form of:

- Salary, wages, commissions, or similar compensation (not including the portion of cash compensation paid to an individual that exceeds an annualized rate of \$100,000);
- Cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of tips);
- Payment for vacation, parental, family, medical, or sick leave (but not Covid-19 paid leave provided under the Families First Coronavirus Response Act);
- Allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement;
- Payment of state and local taxes assessed on compensation of employees; and
- For an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation.

According to the forgiveness regulations and loan application, state unemployment insurance tax is an example of state and local taxes assessed on employee compensation.





Nonpayroll Costs

What types of non-payroll costs may be forgiven?

Non-payroll costs eligible for forgiveness include:

- 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;
- Business rent or lease payments made under leases for real or personal property in force before February 15, 2020; and
- Business payments for electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

When must nonpayroll costs be paid or incurred to qualify for forgiveness?

A nonpayroll cost is eligible for forgiveness if it was either paid during the covered period (i.e., the eight-week period starting on the loan disbursement date) 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. If the bill includes costs incurred after the covered period, only that portion of the bill covering costs incurred during the covered period qualifies for forgiveness.

So if a borrower whose covered period starts June 1 and ends July 26 pays its July electricity bill on August 10, the next regular billing date, the portion of the bill representing covering electricity charges through July 26 is eligible for forgiveness.

Non-payroll costs incurred in a period prior to the loan disbursement date and paid during the covered period are eligible for forgiveness.

Thus, if the borrower described above pays its May electricity bill on its due date in June, the payment will be eligible for forgiveness.

Note that there is no "alternative covered period" for non-payroll costs.



Reductions in Loan Forgiveness

As required by the CARES Act, reductions in full-time equivalent employees or in employee salary and wages during the covered period will reduce the loan forgiveness amount, except in





certain cases where the borrower rehires employees and restores salary and wage levels by June 30, 2020.

How is the number of FTEs determined?

Per the regulations and application, a full-time equivalent employee ("FTE") is an employee who works 40 hours or more, on average, each week. Borrowers must calculate and document their average number of FTE employees during the applicable eight-week period and a selected reference period (February 15 through June 30, 2019 or January 1 through February 29, 2020). In calculating the number of FTEs, a borrower divides the average number of hours paid for each employee per week by 40, capping the result per employee at 1.0 (so, for example, an employee paid for 48 hours per week during the applicable period would be considered 1.0 FTE). For employees paid to work fewer than 40 hours per week, a borrower may either: (1) calculate the average number of hours the employee was paid per week during the covered period and divide that number by 40; or (2) for administrative convenience, elect to use a full-time equivalency of 0.5 for each part-time employee.

Will employees who are fired for cause or who voluntarily resign or request to work fewer hours reduce the borrower's FTE count?

No. Employees who are fired for cause, voluntarily resign, or voluntarily request a schedule reduction during the applicable eight-week period will not reduce the borrower's FTE count for purposes of calculating the forgiveness amount.

Will employees who reject a re-hire offer or an offer to restore reduced hours result in a reduced FTE count?

No. The regulations formalize a previously issued SBA FAQ indicating that laid-off employees who reject a re-hire offer will not affect a borrower's loan forgiveness amount. In particular, a borrower may exclude an employee from the reduction in FTE calculation if:

- The borrower made a good faith, written offer to rehire the employee (or, if applicable, restore the reduced hours of such employee) during the applicable eight-week period;
- The offer was for the same salary or wages and same number of hours as earned by the employee in the last pay period before the lay off or reduction in hours;
- The employee rejected the offer;
- The borrower maintains records documenting the offer and its rejection; and
- The borrower informed the applicable state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer. The SBA will provide information on its website about how borrowers are to report information concerning rejected rehire offers to state unemployment insurance offices.





How do salary reduction calculations work?

The loan application clarifies that reducing the *average* annual salary or hourly rate of one or more employees who were not paid more than an \$100,000 annualized in any pay period in 2019 during the applicable eight-week period by more than 25 percent as compared to each such employee's respective *average* salary or hourly rate in the first quarter of 2020 will result in a reduction in the loan forgiveness amount. According to the regulations and application, these calculations are to be performed on a per employee basis rather than in the aggregate.

Will reducing an employee's hours result in both a salary reduction and an FTE reduction?

The regulations explain that if an employee's hours are reduced but their rate of pay remains the same, the reduction will be considered an FTE reduction but not a salary/wage reduction.

So, for example, if an employee making \$10 per hour for 40 hours a week (or \$400 per week) is reduced to half time (20 hours a week, or \$200 per week), that change is treated as a reduction of hours, but not also a reduction in salary/wages, for purposes of reducing the portion of the loan that is forgivable.

When may restoring reductions in salaries and headcounts help in avoiding a reduced loan forgiveness amount?

Under the CARES Act, if by June 30, 2020, a borrower restores reductions made to employee salaries and wages or to the number of FTE employees between February 15 and April 26, 2020, the borrower can avoid a reduction in its loan forgiveness amount. However, this safe harbor is not available for salary and FTE reductions made after April 26.



Loan Forgiveness Process

How does a borrower apply for loan forgiveness?

After the end of the applicable eight-week period, a borrower must complete and submit the loan forgiveness application to its lender (or to the lender servicing the loan), along with the documentation required in the application's instructions.

How long will it take to get a loan forgiveness decision?

The lender has 60 days from receipt of a complete loan forgiveness application to review it and submit a decision to the SBA. If the lender denies loan forgiveness, the borrower has 30 days to request that the SBA review the lender's decision. If the lender determines that the borrower is entitled to full or partial forgiveness, the lender must request payment from SBA at the time the lender issues its decision to the SBA. Unless it decides to review the loan, the SBA will pay





the appropriate forgiveness amount to the lender, plus any accrued interest, within 90 days after the lender submits its loan forgiveness decision to the SBA.

What if a borrower received an EIDL advance?

If the borrower received an advance under a CARES Act Economic Injury Disaster Loan ("EIDL") the SBA will deduct the advance amount from the forgiveness amount paid to the lender.

What if the loan is forgiven after the borrower has started making payments on the loan?

If the borrower has already started making payments on the loan and the amount the SBA remits to the lender is more than the remaining principal balance of the loan, the lender must pay the borrower the excess amount, including accrued interest.

What if all or part of the loan is not forgiven?

The borrower must repay any portion of the loan that is not forgiven, plus interest, on or before the loan's two-year maturity date. Borrowers must start making loan payments no later than six months after receiving the loan.



SBA Review of Loans

Which PPP loans are subject to SBA review?

As indicated in the SBA's PPP [FAQ](#) (FAQ 39 and 46), the SBA will review all loans of more than \$2 million, and other loans "as appropriate," following the lender's submission of the borrower's loan forgiveness application. The regulations reiterate that the SBA may, at its discretion, review loans of any size at any time.

What rights does a borrower have if the SBA reviews a loan or determines that the borrower is ineligible for a loan or for loan forgiveness?

A borrower will have the opportunity to respond to SBA's questions in a review. A borrower may appeal the SBA's determination that it is ineligible for a PPP loan or ineligible for the loan amount or the loan forgiveness amount it claimed under a separate regulation to be issued by the SBA.

How long must the borrower keep PPP loan documentation?

The borrower must retain PPP documentation in its files for six years after the date the loan is forgiven or repaid in full and permit authorized SBA representatives access to those files upon request.





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Additional Resources

- [COVID-19: Reopening Massachusetts Phase One](#) (May 20)
- [SBA Provides Limited Safe Harbor on Paycheck Protection Loan Certification](#) (May 14)
- [New Attorney General Guidance on Access to Endowment Funds](#) (April 29)
- [Moratorium on Evictions and Foreclosures Offers Protection to Some Individuals, Small Businesses and Nonprofits](#) (April 21)
- [SBA Issues Interim Final Rules on Paycheck Protection Program](#) (April 6)
- [The CARES Act: Summary of Select Provisions Related to Small Businesses](#) (March 31)
- [The CARES Act and Nonprofits](#) (March 31)

Please visit our [COVID-19 resource page](#) for additional resources related to COVID-19.

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