

Is Your Business Ready To Apply for Loan Forgiveness?

What You Need To Know:

SBA Guidance for Paycheck Protection Program (PPP) Loan Forgiveness

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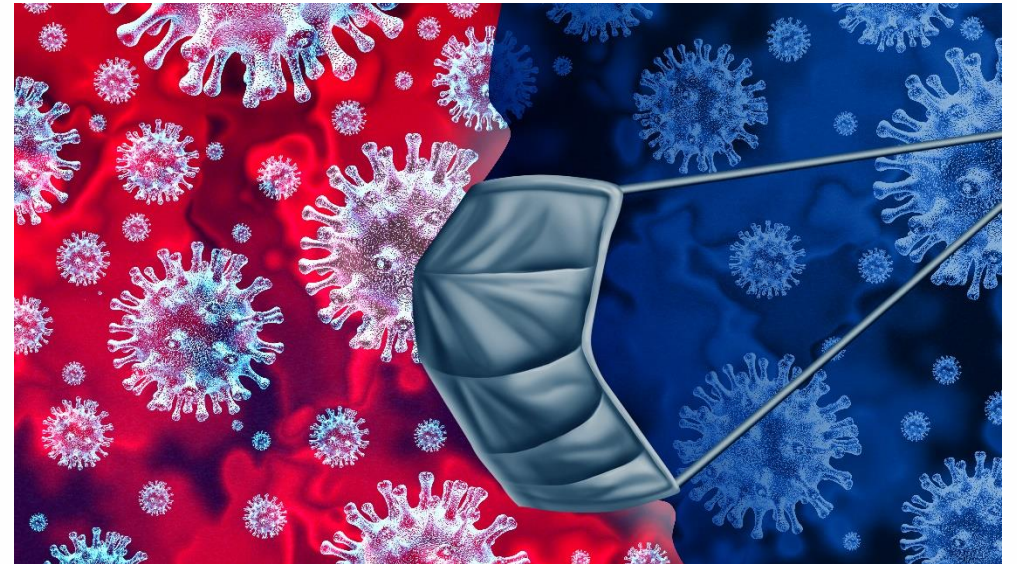
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Disclaimer

This presentation is for educational purposes only. It addresses what we currently know about these recently signed laws and our understanding of how the applicable regulatory agencies will interpret these laws.



A General Summary of the PPP

1. Companies with fewer than 500 employees or companies who meet the SBA's size requirements are eligible for a PPP loan.
2. Companies are eligible for loans up to the lesser of 2.5 times their average monthly payroll costs (or \$10mm).
3. Companies must use the loan over an 8 week period.
4. Companies must use the loan for defined payroll and non-payroll costs.
5. Companies must use 75% of loan on defined payroll costs.
6. **Companies may have loan forgiven if used for allowable purposes**
7. Any amount not forgiven is due in within 2 years with 1 percent interest.

PPP Forgiveness: Determining the 8 Week Loan Period

Defining the 8 Week Loan Period: Before determining the extent of forgiveness, a borrower can now determine one of two periods to measure payroll costs.

1. Covered period. 8 week period that starts on the same day as the PPP loan disbursement date.
2. Alternative Payroll Covered Period. SBA has provided for an “alternative payroll covered period” for administrative convenience. That period is the 8-week period starting on the *first day of the company’s first pay period following PPP loan disbursement.*

→ The alternative payroll covered period only applies for payroll costs. any expenses for covered rent, utilities, and so forth. It still must be paid during the 8-week “covered period” following loan disbursement.

PPP Forgiveness: Example of 8 Week Loan Periods

1. Covered period Example.

- Borrower receives PPP loan on Monday, April 20
- April 20 is the first day of the loan period
- Sunday, June 14 is the last day of the loan period

2. Alternative Payroll Covered Period Example.

- Borrower receives PPP loan on Monday, April 20
- Borrower's first day of its first pay period follow disbursement is Sunday, April 26
- April 26 is first date of alternative payroll period
- Saturday, June 20 is the last day of the loan period

PPP Forgiveness: Payroll and Non-Payroll Costs

1. **Using the Loan**: The loan may be used for payroll and non-payroll costs as defined.
2. **Percentage of Usage for Non-Payroll**: No more than 25% of the loan may be used on non-payroll costs.
3. **Percentage of Usage for Payroll Costs**: No limit on how much of the loan may be used on payroll costs, except that if the borrower uses less than 75% on payroll, then it will reduce amount of forgiveness.

PPP Forgiveness: What's Included in Payroll Costs

What is included in Payroll Costs?

1. Cash compensation- Includes gross salary, wages, gross tips, gross commissions, paid leave (excludes FFCRA leave), and allowances for dismissal or separation.
 - The total for each individual employee may not exceed \$15,385 for the period (\$100,000 pro-rated).
 - Any amounts paid to owners (owner-employees, a self-employed individual, or general partners) are capped at \$15,385 (the eight-week equivalent of \$100,000 per year) for each individual or the eight-week equivalent of their applicable compensation in 2019, whichever is **lower**.
2. Other payroll costs: employer contributions for employee health insurance, including employer contributions to a self-insured, employer-sponsored group health plans; employer contributions to employee retirement plans; and employer state and local taxes assessed on employee compensation (e.g., state unemployment insurance tax).

PPP Forgiveness: When Can a Borrower Pay Payroll Costs?

Payroll Costs Incurred and/or Paid: There are three scenarios which may impact forgiveness.

1. Payroll costs incurred AND paid during the covered period or alternative covered period are eligible for forgiveness.
2. Payroll costs incurred during the covered period OR alternative covered period but not paid are eligible if paid on or before the next regular pay period.
3. It is unclear whether payroll costs paid but NOT incurred during the covered period or alternative covered period are eligible for forgiveness due to unclear language in the statute and forgiveness application.

PPP Forgiveness: What's Included in Non-Payroll Costs?

What is Included in Non-Payroll Costs?

1. Covered mortgage obligations: 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;
2. Covered rent obligations: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020; and
3. Covered utility payments: business payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

PPP Forgiveness: When Can a Borrower Pay Non-Payroll Costs?

Non-Payroll costs incurred or paid

1. Non-payroll costs must be incurred and paid during the covered period, or
2. Non-payroll costs must be incurred during the covered period and paid on or before the next regular billing date.

****Note. It is unclear if non-payroll costs incurred before loan period, but paid during loan period are forgivable.**

PPP Forgiveness: Determining The Amount Forgiven

A borrower may not have the entirety of its loan forgiven if:

1. Improper Use: Loan proceeds are used for costs other than defined payroll costs and non-payroll during the Covered Period; and/or
2. Failure to Maintain Headcount and Wage/Salary Levels.
 - A. Headcount: The amount eligible for forgiveness will be reduced if the borrower decreases its full-time employee headcount.
 - B. Wages/Salaries: The amount eligible for forgiveness will also be reduced if the borrower decreases total salaries and wages of employees (who made less than \$100,000) during the loan period in excess of 25% the total wages the employee was paid in the most recent full quarter in which the employee was employed before the covered period.
3. Failure to Use 75% of Loan on Payroll Costs: 75% of the amount forgive must be applied to payroll costs.

PPP Forgiveness: Reduction in Full Time Employees Headcount

Reduction in FTE Headcount Levels: The amount eligible for forgiveness will be reduced if the borrower decreases its full-time employee (“FTE”) headcount during the loan period.

→ The reduction percentage is determined as follows:

1. Average number of full-time employees during the covered period

DIVIDED by

2. EITHER (a) the average number of full-time employees per month from February 15, 2019 to June 30, 2019 OR (b) the average number of full-time employees per month from January 1, 2020 to February 29, 2020.

** Borrower may choose which historical period

PPP Forgiveness: Defining FTE's For Headcount Reduction

Definition of FTE: To calculate the average FTEs during the covered period or alternative payroll covered period, a borrower can use two methods:

1. Enter the average number of hours paid per week during the loan period divide by 40, and round to the nearest tenth, OR
2. Assign a 1.0 for each employee who was paid for 40 hours or more on average per week and a .5 for employees who was paid for fewer than 40 hours on average per week.

***Note: This definition looks at hours paid, *not* hours worked.**

**** Note: Application does not address salaried employees, but they are assumed to be paid for 40 hours per week on average.**

PPP Forgiveness: Calculating Number FTEs Example

Example of Calculating FTE Employees: For the loan period, XYZ Corp had the following employees:

- Employee A averaged 45 hours paid per week
- Employee B averaged 40 hours paid per week
- Employee C averaged 28 hours paid per week
- Employees D and E averaged 20 hours paid per week.

Calculating Method 1. XYZ Corp had 3.7 FTEs during loan period.

- Employee A: $45/40 = 1.0$ (capped)
- Employee B: $40/40 = 1.0$
- Employee C: $28/40 = .7$
- Employees D & E: $20/40 = .5$ each

Calculating Method 2. XYZ Corp had 3.5 FTEs during loan period.

- Employee A: $45/40 = 1.0$ (capped)
- Employee B: $40/40 = 1.0$
- Employee C: $28/40 = .5$
- Employees D & E: $20/40 = .5$ each

PPP Forgiveness: Example of Headcount Reduction

Example of Headcount Reduction Formula

Example 1: Company obtains \$25,000 loan

- XYZ Corp had either 3.5 or 3.7 FTEs (depending on method selected) during loan period
- XYZ Corp 5 FTEs during January 1, 2020 to February 29, 2020
- $3.7 \text{ FTEs} / 5 \text{ FTEs} = .74$
- XYZ Corp has 74% of loan forgiven, which amounts to \$18,500 forgiven

Example 2. Company obtains \$25,000 loan

- XYZ Corp had either 3.5 or 3.7 FTEs (depending on method selected) during loan period
- XYZ Corp 3.5 FTEs during February 15, 2019 to June 30, 2019
- $3.7 \text{ FTEs} / 3.5 \text{ FTEs} = 1.05$
- XYZ Corp has 100 % of loan forgiven

PPP Forgiveness: Exceptions for Decrease in FTEs

Exception for Decrease in FTEs: SBA has created an exception for companies that have decrease in FTEs through no fault of their own. Any of the below employees will be treated as FTEs during the loan period:

1. Any positions for which the borrower made a good-faith written offer to rehire an employee during the selected loan period, which was rejected by the employee (and borrower maintains documentation to that effect); and
2. Any employee who during the selected loan period were (a) fired for cause, (b) voluntarily resigned; or (iii) voluntarily requested and received a reduction of their hours.

PPP Forgiveness: FTE Reduction Safe Harbor

FTE Reduction Safe Harbor Defined:

1. If the borrower reduced its FTE employee levels from February 15, 2020 to April 26, 2020, and
2. Then restored its FTE levels by not later than June 30, 2020 to its FTE levels in the borrower's pay period that included February 15, 2020,
3. Then the borrower will not be considered subject to a FTE reduction during the loan period.

PPP Forgiveness: Example of FTE Reduction Safe Harbor

Example of FTE Reduction Safe Harbor

1. XYZ Corp. had 4.0 FTEs from February 15, 2020 to April 26, 2020.
2. XYZ Corp had 4.5 FTEs in the pay period inclusive of February 15, 2020.
3. If no. 2 is greater than no. 1, XYZ Corp must then compare the number of FTEs on during pay period inclusive of February 15, 2020 (4.5 FTEs) to the number of FTEs on June 30, 2020.
4. If the number of FTEs on June 30, 2020 is equal to or greater than 4.5, no reduction in forgiveness is required. If it is less, than safe harbor is not applicable, and regular headcount analysis is conducted.

PPP Forgiveness: Determining The Amount Forgiven

A borrower may not have the entirety of its loan forgiven if:

1. Improper Use: Loan proceeds are used for costs other defined payroll costs and non-payroll during the Covered Period; and/or
2. Failure to Maintain Headcount and Wage/Salary Levels.
 - A. Headcount: The amount eligible for forgiveness will be reduced if the borrower decreases its full-time employee headcount.
 - B. Wages/Salaries: *The amount eligible for forgiveness will also be reduced if the borrower decreases total salaries and wages of employees (who made less than \$100,000) during the loan period in excess of 25% the total wages the employee was paid in the most recent full quarter in which the employee was employed before the covered period.*
3. Failure to Use 75% of Loan on Payroll Costs: 75% of the amount forgive must be applied to payroll costs.

PPP Forgiveness: Reductions in Salary/Hourly Wages

Failure to maintain average salary/wages: The amount of loan forgiveness will also be reduced if employees (who made less than \$100,000 in annualized wages in 2019) receive a reduction in pay during the Covered Period or alternative covered pay period of more than 25% of the average salary or wages of the employee during the last quarter.

****Note. There is no indication in the application that this include tips and commissions.**

PPP Forgiveness: Reductions in Salary/Hourly Wages Formula

Reduction in Salary/Hourly Wage Formula: (WARNING) This Will Hurt Your Brain

- 1. Step 1: Determine if Pay was Reduced More than 25%**
 - a. What is average annual salary or hourly wage during loan period?
 - b. What is average annual salary or hourly wage between Jan. 1, 2020 and Mar. 31, 2020
 - c. Divide no. 1.a by no. 1.b (if it is .75 or more, no reduction; otherwise go to Step. 2)
- 2. Step 2: Determine the Salary/Wage Reduction**
 - a. Multiply no. 1.b by .75
 - b. Subtract the amount in no. 1.a from no. 2.a

PPP Forgiveness: Reductions in Salary/Hourly Wages Formula Cont.

Reduction in Salary/Hourly Wage Formula Cont.

Step 2: Determine the Salary/Wage Reduction Cont

c. For Salaried Employees. Compute the reduction as follows:

→ Multiply the amount in 2.b by 8 (for 8 weeks of loan)

→ Divide the amount by 52 and that equals total amount of reduced forgiveness

d. For Hourly Employees. Compute the reduction as follows:

→ What is average number of hours worked per week from Jan. 1 2020 to Mar. 31, 2020

→ Multiply the amount in 2.b by the above average hours and then that sum by 8 for total amount of reduction

PPP Forgiveness: Example of Reduction in Salary

Example of Reduction of Salary (assuming employee earns below \$100k/year)

- Employee A was paid \$8,000 during the 8-week covered period.
- Employee A was paid \$20,000 for the period January 1, 2020 to March 31, 2020.
 - Step 1:
 - Employee A's average annual salary was \$52,000 for the 8-week covered period ($(\$8,000/8) \times 52$).
 - Employee A's average annual salary was \$80,000 for the period January 1, 2020, to March 31, 2020 ($\$20,000 \times 4$).
 - $\$52,000/\$80,000 = 65\%$. (If 75% or more then stop; otherwise proceed to next step).
 - Step 2:
 - $\$80,000 \times 75\% = \$60,000$.
 - $\$60,000 - \$52,000 = \$8,000$.
 - $(\$8,000 \times 8) / 52 = \mathbf{\$1,230}$ (amount not forgiven).

PPP Forgiveness: Example of Reduction of Hourly Wages

Example of Reduction of Hourly Wages (assuming earns less than \$100k per year)

- Employee A was paid \$20/hour during the covered loan period.
- Employee A was paid \$50/hour for the period January 1, 2020 to March 31, 2020.
 - Step 1: $\$20/\$50 = 40\%$. (If 75% or more then stop; otherwise proceed to next step).
 - Step 2: $\$50/\text{hour} \times .75 = \37.5
 - $\$37.5 - \$20 = \$17.5$ (average reduced pay during covered loan period)
 - Determine average number of hours worked per week from Jan 1, 2020 and Mar 31, 2020 = 40
 - $\$17.5 \times 40 \text{ hours} = \700
 - $\$700 \times 8 \text{ weeks} = \mathbf{\$5,600}$ (amount not forgiven)

PPP Forgiveness: Salary/Hourly Wage Reduction Safe Harbor

Salary/Hourly Wage Reduction Safe Harbor Defined

For any employee who would otherwise have reduced forgiveness based on salary/hourly wage reduction, there is the following safe harbor:

→ If employee's salary/hourly rate was reduced between February 15, 2020 and April 26, 2020, and the employee's salary/hourly rate is returned to the same level it was on February 15, 2020 by June 30, 2020, then the employee will not be considered subject to a wage/hourly rate reduction during the loan period.

***Note: This reduction is employee specific, whereas the headcount FTE reduction is not.**

PPP Forgiveness: Salary/Hourly Wage Reduction Safe Harbor Formula

Salary/Hourly Wage Reduction Safe Harbor Formula

1. What is annual salary or hourly wage as of February 15, 2020.
2. What is average annual salary or hourly wage between February 15, 2020 and April 26, 2020.
3. If no. 2 is equal to or greater than no. 1, then safe harbor not applicable. Otherwise, proceed to next step.
4. What is annual salary or hourly wage as of June 30, 2020. If no. 4 is equal to or greater than no. 1, the safe harbor is met and applied for the applicable employee.

PPP Forgiveness: Example of Salary/Wage Reduction Safe Harbor

Example of Salary/Hourly Wage Reduction Safe Harbor

- Employee A was being paid an annual salary of \$75,000 on Feb. 15, 2020.
- Employee A's average salary from February 15, 2020 to April 26, 2020 was reduced to \$55,000.
- Employee A's salary was further reduced to \$8,000 for the covered loan period (\$52,000 annualized).
- Employee A's annual salary was increased to \$75,000 by June 30, 2020.
- Even though Employee A's salary has returned to the amount he was paid on February 15 (\$75,000), the safe harbor is met and there is reduction for that particular employee.

PPP Forgiveness: Determining The Amount Forgiven

A borrower may not have the entirety of its loan forgiven if:

1. Improper Use: Loan proceeds are used for costs other defined payroll costs and non-payroll during the Covered Period; and/or
2. Failure to Maintain Headcount and Wage/Salary Levels.
 - A. Headcount: The amount eligible for forgiveness will be reduced if the borrower decreases its full-time employee headcount
 - B. Wages/Salaries: The amount eligible for forgiveness will also be reduced if the borrower decreases total salaries and wages of employees (who made less than \$100,000) during the loan period in excess of 25% the total wages the employee was paid in the most recent full quarter in which the employee was employed before the covered period.
3. **Failure to Use 75% of Loan on Payroll Costs: 75% of the amount forgive must be applied to payroll costs**

PPP Forgiveness: 75% Payroll Requirement

75% Payroll Requirement Defined: 75% of amount forgiven must be payroll costs, which requires borrowers to use the loan funds for payroll.

Example of the Requirement:

- Borrower obtains \$1mm loan
- Borrower only uses \$500,000 for payroll costs and \$200,000 for non-payroll costs (\$700k total)
- The 75% requirement only allows the borrower to apply for forgiveness on \$666,666.66
 - $\$500,000 \text{ (payroll costs)} / .75 = \$666,666.66$

PPP Forgiveness: The Final Amount of Forgiveness

What is the Final Amount Forgiven: On the application, the borrower will have the **lesser** of the following forgiven:

1. The amount after the headcount and salary/wage reduction are assessed;
2. The total amount of the loan; or
3. The amount based on the 75% requirement

PPP Forgiveness: What must be Submitted?

The Forgiveness Application provides what documents must be submitted to the lenders for forgiveness approval as well as certain categories of documents that a borrower must maintain, even if they do not submit them to the lender. Along with the application, borrowers must submit:

- 1. Payroll:** Documentation verifying the eligible cash compensation and non-cash benefit payments from the Covered Period or the Alternative Payroll Covered Period.
- 2. FTE:** Documentation showing (at the election of the Borrower) the average number of FTEs during the applicable periods.
- 3. Nonpayroll:** Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period.

PPP Forgiveness: What must be maintained but not submitted?

PPP Schedule A Worksheet or its equivalent and the following:

- a) Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1, including the “Salary/Hourly Wage Reduction” calculation, if necessary;
- b) Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 2; specifically, that each listed employee received during any single pay period in 2019 compensation at an annualized rate of more than \$100,000;
- c) Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule; and
- d) Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor.”

** Must retain for 6 years

PPP Forgiveness: Certification and Audits of \$2 million or more

1. The application requires the borrower to certify that its forgiveness application is based on proper usage of funds and based on accurate documentation.
2. Consistent with SBA's announcement that it plans to review any loan in excess of \$2 million, there is a box on the forgiveness application to check for companies that meet that threshold.

QUESTIONS?

THANK YOU!

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