

Clearing a Path Through the PPP Loan Forgiveness Maze



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Today's Agenda

- The Basics
- The Forgiveness Application Form(s)
- Eligible Costs
 - Payroll
 - Non-payroll
- Cost Reductions, Exceptions and Safe Harbors
- Required Documentation
- Other Matters
- Tools and Services Available

Ready, Shoot, Aim!

- Original Forgiveness Application form was released Friday night, May 15th
- PPP Flexibility Act of 2020 enacted on June 5th
- Two revised / updated Applications were released on June 16, 2020
 - Form 3508
 - Form 3508EZ
- Since the Flexibility Act six new Interim Final Rules have been issued

The Basics



Covered Period

- Covered period (or “CP”) is the period during which the borrower may incur expenses qualifying for forgiveness; begins on the day your receive the loan funds.
- Borrowers who received PPP loans prior to June 5th: 24 weeks (168-days – default) or 8 weeks (56 days).
- Borrowers who received PPP loans after June 4th must use a 24 week covered period.
- *Alternative payroll covered period* (or “APCP”) – For administrative convenience, borrowers with a biweekly (or more frequent) payroll schedule may use the 24 week (or 8-week, if applicable) period that begins on the first day of their first pay period following the loan disbursement date.

Loan Terms

- Term of loan -
 - Loans dated prior to June 5th – 2 year minimum
 - Loans dated June 5th or later – 5 year minimum
 - Borrowers with loans dated prior to June 5th may request that the loan term be extended
- Interest rate – 1 percent
- Payment deferral – Repayment must begin on the date that is 10 months after the end of your covered period.

Forgiveness Application Due Date

- Application is due any time on or before the maturity date of the loan.
- If not filed by payment deferral date (approximately 15.5 months from the loan date), repayment must begin.
- Forgiveness application may be filed before the end of your covered period as long as you have spent the funds for which you are seeking forgiveness.
 - Excess wage reduction penalty must be computed for the full 24 weeks
 - No guidance (yet) as to if or how FTE reductions during the covered period (but after you file the forgiveness application) impact forgiveness

Application Submission Process

- Completed applications are submitted to your lender using the lender's submission system.
- Lender has 60 days to review the application and get back to borrower with a preliminary decision
- Application is then submitted to SBA for final approval. This can take up to an additional 90 days.
- SBA will notify the lender of their decision and disburse the amount approved for forgiveness, plus accrued interest, to the lender.
 - The amount remitted is reduced by any EIDL advance/grant (up to \$10,000).

The Basic Loan Forgiveness Calculation

$$\begin{array}{r} \text{Payroll costs*} \\ + \text{Nonpayroll costs} \\ \hline \text{Less: Salary/Hourly Wage Reductions} \\ \hline \text{Total Eligible Costs} \\ \times \text{FTE Reduction Quotient} \\ \hline \text{Total Forgiveness Amount**} \\ \hline \text{Less: EIDL Grant} \\ \hline \hline \text{PPP Forgiveness Amount} \end{array}$$

* Must be at least 60%

** Not to exceed 166.6% of Payroll Costs or 100% of the PPP Loan

The Application Form



Two Forms to Choose From

- The standard form – Form 3508
- The Simplified Form – Form 3508EZ – if:
 - Borrower is self-employed with no employees at the time of the PPP loan application and did not include any employees in average monthly payroll for purposes of determining the loan amount; or
 - The borrower did not reduce the annual salary or hourly wage of any employee that earned less than \$100,000 in 2019 by more than 25% during the CP or APCP, and
 - Did not reduce number of employees between 1/1/20 and end of CP, or
 - Was unable to operate during the CP due to compliance with COVID-19 safety requirements.

Standard Application - 3 Parts

- PPP Schedule A Worksheet
 - Accumulates cash compensation and FTEs by individual
 - Instructions for wage reduction penalty
 - Instructions for various FTE reduction exceptions and safe harbors
 - Not required to be submitted with Application
- PPP Schedule A
 - Takes summary cash compensation and FTEs from the Worksheet
 - Accumulates non-cash payroll costs
 - Compute the FTE reduction ratio
- PPP Loan Forgiveness Calculation Form

Schedule A – Table 1

Table 1: List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of less than or equal to \$100,000 for all pay periods in 2019 or were not employed by the Borrower at any point in 2019.

Employee's Name	Employee Identifier	Cash Compensation	Average FTE	Salary / Hourly Wage Reduction
FTE Reduction Exceptions:				
Totals:		Box 1	Box 2	Box 3

Schedule A – Table 2

Table 2: List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of more than \$100,000 for any pay period in 2019.

Employee's Name	Employee Identifier	Cash Compensation	Average FTE
Totals:		Box 4	Box 5

Required Certifications

- Included costs are eligible for forgiveness
 - All reductions in salaries and FTEs are included
 - Payroll costs are at least 60% of total
 - Payroll costs for any *owner-employee* or self-employed individual is capped at \$20,833 (for 24-week CP) or \$15,385 (for 8-week CP)
- Acknowledgement that if funds were knowingly used for unauthorized purposes, feds may pursue recovery of loan plus civil and criminal penalties.
- All required documents were submitted application; submitted tax documents are authentic.
- Acknowledge that SBA may request additional information.

Eligible Costs



Payroll Costs

- Payroll costs = Cash compensation + Employer Health Insurance + Employer Retirement Contributions + Employer state payroll taxes (SUI)
- Include:
 - Payroll costs *paid during the Covered Period* (or Alternative Payroll Covered Period)
 - Payroll costs *incurred during the covered period* (or APCP) and *paid by the first regular payroll date after the covered period*
 - Payroll costs paid and incurred can only be counted once
- Payroll costs are considered to be paid on the day paychecks are distributed or the ACH credit transaction is originated by the borrower
- Okay to pay bonuses

Payroll Costs - Limitations

- \$1,923 per week per employee
 - \$15,385 for 8-week CP/APCP
 - \$46,154 for 24-week CP/APCP
 - Presumably pro-rated if you choose to file before the end of 24 weeks.
- For self-employed individuals and *owner-employees* (as noted previously):
 - 8/52nds of 2019 compensation up to \$15,385 for 8-week CP/APCP
 - 24/52nds of 2019 compensation up to \$20,833 for 24-week CP/APCP
 - For Schedule C filers – Line 31 from your 2019 Schedule C
 - General partners and LLC members – 2019 SE income, less Sec 179 and unreimbursed expenses, multiplied by .9235

SE and Owner-Employee Benefits

	Health Ins.	Retirement
Self-employed (Schedule C/F)	No	No
GP / LLC Member	No	No
S-Corp Owner-Employee	No	Yes, but included in overall cap
C-Corp owner employee	Yes, but included in overall cap	Yes, but included in overall cap

Example - Payroll Paid and Incurred

- Bi-weekly payroll
 - Sunday through Saturday
 - Paid the following Friday
- PPP loan date – 5/1/20
- 8-week CP elected (56 days)
- Start of APCP – 5/10/20
- End of APCP – 7/4/20

Pd Start	Pd End	Pay Day	# Days
4/26/20	5/9/20	5/15/20	14
5/10/20	5/23/20	5/29/20	14
5/24/20	6/6/20	6/12/20	14
6/7/20	6/20/20	6/26/20	14
6/21/20	7/4/20	7/10/20	14
Total			70

Payroll Costs – Questions Remain

- Definition of owner-employee
 - Is there a minimum ownership threshold?
 - Attribution to close family members (similar to tax rules)?
- When are health and retirement benefits *considered to be paid*?
 - Is it on the day the paychecks are distributed or ACH credit is originated?
 - Or is it on the day the remittance is made to the insurer or plan trustee?
 - Is there any limitation on accruals, such as 2019 accrued retirement contributions paid during the CP/APCP?

Nonpayroll Costs

Amounts paid during the CP, plus amounts incurred during the CP and paid by the next regular billing date, for:

- Mortgage interest (not principal)
 - Includes loans secured by real or personal property
 - Prepayments of mortgage interest explicitly disallowed
- Rents for real or personal property used in your business
- Utilities (service for the distribution of electricity, gas, water, transportation, telephone or internet access)
- Loans / agreements / services must have been in place prior to 2/15/20
- No explicit prohibition against rent or utility prepayments

Nonpayroll Costs - Questions

- What is included in utility costs?
 - The definition seemed pretty clear until the SBA indicated in IFR #3 that gas for our business vehicle is a utility.
- Are there any limitations on prepayments of rent or utilities?
 - Can a borrower pre-pay several months of rent (including related party rents)?
- Are there any limitations on payment of prior deferred rents (or utilities)?

Cost Reductions, Exceptions and Safe Harbors



Determining FTE's

- Based on hours *paid* (as opposed to hours worked)
- Calculated using a 40 hour week
 - Average hours per week / 40, rounded to the nearest 10th
 - Maximum for each employee is 1 FTE
- Alternative Simplified method
 - 1 for employees who work 40 hours or more
 - .5 for all other employees
- Owners are not included in the average FTE computations
- Method chosen must be applied consistently for all FTE calculations (base period and safe harbor periods)

FTE Reduction Quotient

- Total eligible costs are multiplied by the FTE Reduction Quotient to arrive at forgivable costs.
- The FTE Reduction Quotient (bottom of Schedule A) is:
 - Average FTEs in your Covered Period (or APCP), divided by
 - Average FTEs in your *chosen reference period* (the base period with the lowest number of average FTEs)
 - February 15, 2019 to June 30, 2019
 - January 1, 2020 to February 29, 2020
 - Optional for seasonal employers – any 12-consecutive weeks between May 1, 2019 and September 15, 2019

FTE Computation Example

	Wk1	Wk2	Wk3	Wk4	Wk5	Wk6	Wk7	Wk8	Ttl/Avg	FTE's	
										Regular	Simple
Wrong Way - Total Hours Worked											
EE-1	37.5	37.5	37.5	37.5	37.5	37.5	37.5	37.5	300.0	0.9	0.5
EE-2	45.0	45.0	50.0	45.0	50.0	55.0	45.0	45.0	380.0	0.9	0.5
EE-3	60.0	60.0	60.0	60.0	60.0	-	-	-	300.0	0.9	0.3
EE-4	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	200.0	0.6	0.5
EE-5	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	120.0	0.4	0.5
										3.7	2.3
Correct Way - Total/Weekly Hours Paid											
EE-1	37.5	37.5	37.5	37.5	37.5	37.5	37.5	37.5	300.0	0.9	0.5
EE-2	37.5	37.5	37.5	37.5	37.5	37.5	37.5	37.5	300.0	0.9	0.5
EE-3	37.5	37.5	37.5	37.5	37.5	-	-	-	187.5	0.6	0.3
EE-4	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	200.0	0.6	0.5
EE-5	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	120.0	0.4	0.5
										3.4	2.3

EE-1,2 and 3 – FT salaried

EE-4 and 5 – PT hourly

FTE Reduction Exceptions

- Borrower *unable* to rehire or replace individuals who were employees on February 15, 2020 (includes restoration of reduced hours)
 - Must be good faith written offer (at the same rate of pay earned during the last pay period prior to separation)
 - Offer is rejected
 - Borrower has documentation and reports this within 30 days to state unemployment (if applicable)
- Employees who during the Covered Period:
 - Are fired for cause
 - Voluntarily resign or reduce hours

FTE Reduction Safe Harbors

- Borrowers are exempt from reduction in forgiveness based on reductions in FTE's if:
 - Borrower reduced FTE's in period 2/15/20-4/26/20; and
 - FTE levels restored not later than 12/31/20 to the FTE employee levels in pay period that included 2/15/20
 - *No guidance on how long restored FTE's have to be maintained – right now this is a point in time test*
 - Employees hired to restore the FTE's do not have to be the same as the ones let go.
- Borrowers able to document an inability to return to the same level the business was operating at prior to February 15, 2020 due to compliance with requirements established by HHS, CDC or OSHA during the period beginning 3/1/20 and ending on 12/31/20
 - Includes state and local directives intended to implement the rules or recommendations referenced above.

Salary/Hourly Wage Reductions

- Complex calculation that (fortunately) only applies to:
 - Employees who earned an annualized rate of pay of not more than \$100,000 for any pay period in 2019
 - Whose salaries were reduced by more than 25% during the Covered Period (or Alternative Payroll Covered Period) as compared to Q1-20
- If this applies, the amount of loan forgiveness is reduced by the amount by which the salary reduction exceeds 25%.
- Exception: Does not apply if the annual salary (or hourly rate) is restored by December 31, 2020 to the level in place as of February 15, 2020.

S/H Wage Reduction Example

	8 Wks	24 Wks
Weekly salary during Q1-20	\$ 1,000	\$ 1,000
Weekly salary during CP	700	700
Reduction	300	300
Reduction threshold	250	250
Excess reduction per week	50	50
Excess reduction during CP	\$ 400	\$ 1,200

Required Documentation



Required Documents to be Submitted

- PPP Loan Forgiveness Calculation Form
- PPP Schedule A
- Optional PPP Borrower Demographic Information Form
- Payroll
 - Bank account statements or 3rd party payroll service reports document the amount of cash compensation to employees
 - Tax forms: 941's, state payroll tax returns
 - Payment receipts, cancelled checks, or account statements documenting the amount of employer contributions to employee health insurance and retirement plans included in the forgiveness amount

Required Documents to be Submitted

- FTE documentation showing
 - Average number of FTE employees on payroll per month between 2/15/19 and 6/30/19, OR
 - Average number of FTE employees on payroll per month between 1/1/20 and 2/29/20, OR
 - Seasonal employer calculation
 - Must match PPP Schedule A, Line 11

Required Documents to be Submitted

- Nonpayroll costs
 - Mortgage interest - Amortization schedule, cancelled checks, account statements for February 2020 and covered period and 1 month after covered period
 - Lease payments – Copy of lease agreement, cancelled checks, lessor account statements for February 2020, the covered period, and 1 month after the covered period
 - Utility payments – Copy of invoices from February 2020, those paid during covered period, cancelled checks, and account statements verifying those eligible payments

Documents to be Maintained

- Documentation supporting the listing of each individual employee in PPP Schedule A worksheet table 1 including applicable documentation of salary/hourly wage reduction calculation
- Documentation supporting each employee listed on PPP Schedule A Worksheet Table 2 received during any single pay period in 2019 compensation at an annualized rate of more than \$100,000
- Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by employee for reduction in work schedule
- Documentation supporting the PPP Schedule A worksheet “FTE Reduction Safe Harbor”

Documents to be Maintained

- **All Files must be maintained for six years** after the date the loan is forgiven or repaid in full.
- Must permit authorized representatives of SBA, including its Office of Inspector General, access to such files upon request.



Other Matters



Application Submission Timing

- No need to rush the application preparation
 - Few if any lenders are even accepting forgiveness applications right now.
 - You can choose between the 8-week and 24-week forgiveness period even after the 24-week period has expired.
 - For most borrowers, with 24 weeks to incur costs and the increase limit of \$46,154 per employee, you can still achieve full forgiveness even if there is a significant FTE reduction during the CP or APCP.
- We don't know if you can amend your application later, so you want to make sure everything is correct.
 - Additional guidance is yet to come.
 - This is especially a concern for those who submit before the end of their CP.

Double-Dipping

- Double-dipping, or being paid for the same cost twice, is a concern for any entity that does business with the government on a cost reimbursement basis, especially nonprofits that derive a significant amount of revenue from government *grants* (not Medicaid or Medicare).
- Emerging rules seem to indicate that you must use the PPP funds first.
 - This will reduce your contract costs and thus, the amount of reimbursement you are entitled to under the government contract/grant.
- Stay tuned to the emerging developments on this topic.

Double-Dipping - Example

	Grant	Non-Grant	Total Eligible Costs	
			Method 1	Method 2
Total qualifying costs	\$ 675,000	\$ 475,000	\$ 1,150,000	\$ 1,150,000
	58.7%	41.3%		
Less grant costs			-	(675,000)
Net qualifying costs			1,150,000	475,000
FTE Ratio			1.0	1.0
Forgivable costs			1,150,000	475,000
Forgivable amount			450,000	450,000
Less grantor "claw-back"	58.7%		(264,130)	-
Net PPP benefit			\$ 185,870	\$ 450,000

- Right now, OMB Memorandum M 20-26 seems to require Method 1.

PKFOD Forgiveness Assistance



Support Available

- Free forgiveness calculator updated for new guidance
- On-going thought leadership in our COVID-19 Resource Center
- Forgiveness Application Preparation
- Forgiveness Application Review
- Consulting and advisory services

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