

FAQs About Paycheck Protection Program SBA Loan Forgiveness*

1. Where can I find the Small Business Administration recently released application form and instructions for loan forgiveness and who processes the application?

The Paycheck Protection Program Loan Forgiveness Application Form (SBA Form 3508 (05/20)) was released by the SBA and will need to be submitted to your SBA lender found [here](#). It includes instructions and worksheets and may be supplemented by additional forms required by your lender. Note that in early June, Congress enacted the Paycheck Protection Program Flexibility Act which made several important changes to the PPP program and the loan forgiveness calculation. It is expected that an updated Loan Forgiveness Form and additional guidance will be released by the SBA shortly. This FAQ will be updated as that information is available.

2. How do I determine how much of the SBA PPP loan is forgiven?

The PPP Loan Forgiveness Application and worksheet will take you through a 3-step process to calculate the maximum amount of possible loan forgiveness based on:

- 1) the borrower's expenses during the 8-week or 24 week covered periods after the loan is made;
- 2) the amount, if any, by which the loan forgiveness will be reduced due to a reduction in FTE staff or reduced salaries and wages; and
- 3) that at least 60% of the eligible loan forgiveness expenses go towards payroll costs as defined below. Up to 40 % of the loan forgiveness amount may be used for nonpayroll purposes as defined below.

3. What are the expenses that qualify for loan forgiveness?

Forgiveness includes the sum of:

- 1) Payroll costs:
 - a. compensation to employees (not exceeding \$15,385 per employee (8-week period) or \$46,154 (24-week period which is described below) and whose principal place of residence is the United States) in the form of gross salary, wages, commissions, or similar compensation; cash payment for vacation, parental, family, medical, or sick leave; 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.

Note: For an independent contractor or sole proprietor, payroll costs only include wages, commissions, income, or net earnings from self-employment, or similar compensation.

- Nonpayroll Costs
- 2) Interest payments on any business mortgage obligation on real or personal property that was incurred before February 15, 2020 (but not any prepayment or payment of principal)
 - 3) Payments on business rent obligations on real or personal property under a lease agreement in force before February 15, 2020; and
 - 4) Business utility payments for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

Note: For an independent contractor or sole proprietor, you must claim a deduction for these expenses on your 2019 Form 1040 Schedule C in order to claim them as expenses eligible for PPP loan forgiveness in 2020.

4) How do you identify the 8-week (56 day) covered period?

Borrowers who obtained loans prior to June 5, 2020 may elect an 8-week covered period beginning on their funding date as their covered period. Alternatively, such borrowers can elect to have a covered period which starts on either the date of disbursement and ends 24 weeks later or December 31, whichever is earlier. Borrowers who obtain loans after June 5, 2020 must use the 24-week covered period.

The 8-week covered period starts either on:

- a. the date of disbursement of the borrower's PPP loan proceeds from the Lender (i.e., the start of the covered period); or
- b. the first day of the first payroll cycle in the covered period (the "**alternative payroll covered period**"). This is for borrowers with a bi-weekly (or more frequent) payroll schedule.
- c. The 24- week covered period starts either on the date of disbursements or the alternative payroll covered period as noted above.

5) What costs are eligible for forgiveness?

Payroll costs paid or incurred during the elected covered period are eligible for forgiveness, including furloughed employees. Also includes hazard pay and bonuses.

Nonpayroll costs are eligible for forgiveness if paid during the covered period, or Incurred during the covered period and paid on or before the next regular billing date. This includes if the billing date is after the covered period; that amount is prorated to cover the days incurred during the covered period.

Advance payments of interest on a covered mortgage obligation are not eligible for loan forgiveness.

6) How do you determine loan forgiveness based on a reduction in the average number of employees?

The borrower's loan forgiveness will be reduced if the average number of weekly full-time equivalent employees (FTEs) during the 8-week period is less than the average number of FTEs during the borrower's chosen reference period. Borrowers can choose between the following **Reference Periods**.

FTE Reduction Determination:

- a. Select a Reference Period
 - February 15, 2019 through June 30, 2019;
 - January 1, 2020 through February 29, 2020; or
 - In the case of a seasonal employer, either of the two preceding methods or a consecutive 12-week period between May 1, 2019 and September 15, 2019.

If the average number of FTE employees during the covered period or the alternative payroll covered period is less than during the reference period, the total eligible expenses available for forgiveness is reduced proportionally by the percentage reduction in FTE employees.

7) Is there a final determination of what a Full-Time Equivalent Employee (FTE) represents?

FTE means an employee who works 40 hours or more, on average, each week.

- The CARES Act does define the term "FTE" but is understood to be a 40 hour work week
- Calculate FTE by dividing the average number of hours paid for each employee per week by 40, capping this quotient at 1.0, or
- For administrative convenience, borrowers may elect to use a FTE of 0.5 for each part-time employee

8) What is the Salary Reduction Determination?

Borrower must reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25 percent of base salary or wages between January 1, 2020 and March 31, 2020 (the **reference period**), subject to exceptions for borrowers who restore reduced wages or salaries.

This reduction calculation is performed on a per employee basis, not in the aggregate.

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

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9) What are the regulatory exemptions?

There are exemptions to the reduction rules for borrowers who have offered to rehire employees or restore employee hours, even if the employees have not accepted.

Restoration of salaries and FTEs include:

- If employee salaries and wages were reduced between February 15, 2020 and April 26, 2020 (the **safe harbor period**) but the borrower eliminates those reductions by June 30, 2020 or earlier, the borrower is exempt from any reduction in loan forgiveness amount. Note that if the 24-week covered period is elected, the date is extended to December, 31, 2020.
- If a borrower eliminates any reductions in FTE employees occurring during the safe harbor period by June 30, 2020 or earlier, the borrower is exempt from any reduction in loan forgiveness. Note that if the 24-week covered period is elected, the date is extended to December, 31, 2020.

Borrower's loan forgiveness amount will not be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction.

In addition there is an exemption from forgiveness reduction if the borrower is unable to rehire individuals who were employees on February 15, 2020 and is unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020.

Furthermore, there is forgiveness reduction exemption if the borrower is unable to return to the same level of business activity as on February 15, 2020 due to compliance with regulations issued by HHS, CDC, or OSHA related to standards of sanitation, social distancing or any other worker or customer safety requirement related to COVID-19.

10) What are the record keeping requirements?

- Required Payroll Documentation
 - Bank account statements or third-party payroll service provider reports documenting cash compensation paid to employees
 - Tax forms (or equivalent third-party payroll service provider reports)
 - Payroll tax filings reported (or that will be reported) to IRS (Form 941)
- Payroll documentation verifying both cash and non-cash compensation payments for the Covered Period (or Alternative Payroll Covered Period)
 - State quarterly business, individual employee wage reporting and unemployment insurance filings reported (or that will be reported)
 - Payment receipts, cancelled checks or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans included in forgiveness amount
 - Third-party payroll provider reports

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- Required FTE Documentation
 - Average number of FTEs on payroll per month employed
 - Between February 15, 2019 and June 30, 2019
 - Between January 1, 2020 and February 29, 2020
 - For seasonal employers, average number of FTEs on payroll per month employed
 - Between February 15, 2019 and June 30, 2019
 - Between January 1, 2020 and February 29, 2020
 - Any consecutive twelve-week period between May 1, 2019 and September 15, 2019
 - Third-party payroll provider reports
- Required Non-Payroll Documentation
 - Mortgage Interest Payments
 - Copy of lender amortization schedule
 - Receipts or cancelled checks verifying interest amount
 - Rent or Lease Payments
 - Copy of current lease agreements and receipts/cancelled checks verifying eligible payments
 - Receipts or cancelled checks verifying eligible payments
 - Utility Payments
 - Copies of invoices from February 2020 and those paid during Covered Period
 - Receipts, cancelled checks or account statements verifying those eligible payments
- Items to retain for at least 6 years after the date the loan is forgiven or repaid in full:
 - Documentation supporting each individual employee and any salary/wage reduction calculation, if necessary
 - Documentation supporting each individual employee receiving 2019 compensation at annualized rate of more than \$100,000
 - Documentation of any employee job offers and refusals, firing for cause, voluntary resignations and written requests by any employee for reductions in work schedule
 - Documentation supporting the “FTE Reduction Safe Harbor,” if necessary

11) Please give an overview of the Loan Review Process?

The lender has **60 days** from receipt of a complete forgiveness application to issue a decision to SBA. Then SBA remits amount of forgiveness, plus any interest accrued no later than **90 days** after lender decision.

SBA may review a PPP loan of any size at its discretion to determine eligibility.

Lender may rely on borrower’s representations, and if they identify errors, lender should work with borrower to remedy issues.



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The lender must issue a decision to SBA on a loan forgiveness application not later than **60 days** after receipt of a complete loan forgiveness application from the borrower.

SBA will remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than **90 days** after the lender issues its decision to SBA.

If SBA undertakes a review, SBA will notify the lender in writing and the lender must notify the borrower in writing within **five business days** of receipt.

12) What is the deferral period for the borrower to repay any amount of the loan that is not forgiven?

Payment of principal, interest and fees on any portion of the loan that is not forgiven is deferred until the date on which the amount of forgiveness is determined and such amount is remitted to the lender from the SBA.

If a borrower fails to apply for forgiveness of a covered loan within 10 months after the last day of the elected covered period, the borrower will be required to make payments of principal, interest and fees on such loan beginning on the day that is 10 months after the last day of the elected covered period.